App. F. IX-4

1934. (Law)

File No. 205-34

Previous References

Law Dept 123-35

Serial Nos. 1-13

PRESERVED

Letter References.

P-283

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. Warden

Part B for July 1934

SUBJECT.

Mandya Cement defalcation case

Serial No.

Dewan's orders Dated 29th January 1935 on file No. D 124/KSS relating to the misappropriation of Cement in the Public Works Stores at Mandya

---

× × ×

(2) When is the case likely to be disposed of in the Magistrate's Court? It seems to be taking a long time

---

The above extract may perhaps be sent to the Law Section for further action-

Mes 1.2.35 1.2.35 1/2/35 1/2/35

Govt (Sec? W.C.) (Law) 1/2/35.

Urgent a Please write to the Deputy Superintendent for a report.

C1-153 4760 738

OFFICE OF THE DISTRICT MAGISTRATE,
MYSORE DISTRICT.

Dated, Mysore, 18th February 1935.

FFICE
1935
.....

Dear Sir,

With reference to your D.O.No.P 3966 dated 4-2-35 and in continuation of this office D.O.No.47 dated 15-2-35 regarding the Criminal Case of misappropriation of cement in the Public Works Stores at Mandya, I write to state that the examination in chief of all the prosecution witnesses and their cross examination except that of 9 witnesses is over and the case is posted to 25-2-35 for the cross examination of the said 9 remaining prosecution witnesses. The Superintendent of Police, French Rocks, reports that the case will be taken up from day to day and closed by the end of the month or the latest by the 3rd March. The Special Magistrate, Mandya and Superintendent of Police, French Rocks, have been requested to expedite disposal of the case.

Yours sincerely,

Buler

IMMEDIATE & CONFIDENTIAL.

D.O.
C. S. KUPPUSWAMIENGAR, ESQ.,
DEPUTY COMMISSIONER.

47/35-

Dated 15th February 1935.

46-76-34
P

Dear Sir,

With reference to your D.O. No.P. 3966 dated 4th February 1935 and subsequent reminder No.D.O.P. 4262 dated 13th February 1935 regarding the Criminal case of misappropriation of cement in the Public Works Stores at Mandya, I write to state that the District Superintendent of Police, French Rocks has been asked to furnish information regarding the stage at which the case stands and when it is likely to be disposed of by the Court. The required information will be furnished soon after the receipt of the report of the District Superintendent of Police who has been reminded to-day to furnish the same by return of post.

Yours sincerely,

To

Rajasevasaktha
R. RANGA RAO, Esq.,B.A.,B.L.,
Chief Secretary to the
Government of Mysore,
Bangalore.

of Superintendent of Police who has been remanded to-
noon after the receipt of the report of the District
Court. The required information will be found
case stands and when it is likely to be disposed o
to through information regarding the stage at which
maintenance or notice, French books have been re
stored at lodges, I write to state that the District
case of misdemeanour or cement 1. The Public
Order Dated 28th January 1958 regarding the Penal
Code Dated 28th January 1958 regarding the Penal
with reference to Kajiado D.C. No. C/DO 2/16

12) I wonder if it is over now. The DC, the owner it would be.

RB
5/3/33

mre
5/3

Further report received from the D.M. Mys. stg
the Spl Magte Mandya hopes to dispose
Case by about 15th inst

Submitted for perusal

(Chief Secy)

mre
6/3

RB
7/3/33

5687 6 5677 p83.

No. G1.1532/34-35
Encl. 2

OFFICE OF THE DISTRICT MAGISTRATE,
MYSORE DISTRICT,

Dated, Mysore 28th March 1935.
29th

From

C.S. Kuppuswamiengar, Esq.,
District Magistrate,
Mysore District, Mysore.

DEWAN'S OFFICE
6 APR. 1935
No. 5882

CHIEF SECRETARY'S
1 APR. 1935

To

Rajasevasaktha
R. Ranga Rao, Esq., B.A.,B.L.,
Chief *Secretary to the Government of Mysore,*
Bangalore.

SIR;

In continuation of this office No.G1.1532/34-35 dated 18th March 1935, regarding the progress in the Cement Theft Case pending before the Special 1st Class Magistrate of Mandya, I have the honor to state that the Magistrate pronounced orders on the 26th instant charging the Storekeeper and Accountant under Sections 409 and 109 I.P.C., etc., and committing them to the Sessions. Copies of charges for which the accused have been committed to the Sessions are sent herewith for information. The 3rd accused (Typist) has been discharged.

Submitted for perusal
a member
Dewan
Thro' Secy, K.R.S.

I have the honor to be,
Sir,
Your most obedient servant,

2/4/35

District Magistrate,
Mysore District.

A.N.

Submitted

3/4/35

D.181/K.C.S.

Dewan)
thro
II Member)

OFFICE OF THE SECOND MEMBER OF COUNCIL.
5 APR. 1935
No. 6806

7170

Mandya Cement theft Case

General and Revenue Secretariat.

Law File No. 205 of 1934 [App. F. III-2

From,

The Dt. Magte, Mysore

no. 3, nsk/secrt. dated 16.6.35 Soliciting sanction of Govt in the Circumstances stated to appoint a Special PPr to Conduct the Mandya Cement theft Case in the Court of the Asst Sessions Judge, Mysore

1) It is reported that Mr K. Ramaswamy PPr, Mys has got heavy work before the Sessions Judge during the months of July and Aug, and will not be able to Conduct the Cement theft Case in the Asst Sessions Judge, Mysore. The D.M. recommends that a Competent officer of the Police dept may be appointed a Spl PPr to Conduct the Cement Case. In this Connection he suggests the names of Messrs D. Sahagiri Rao and M.S. Rangachar. His suggestion if accepted will minimise the Cost that would be incurred in appointing a legal practitioner as Spl PPr

2) But this Mandya Cement Case being a very Complicated one involving lengthy evidence it is for Consideration whether the services of Mr K. Ramaswamy will not be of much use if he is allowed to handle this Case. He suggests that the usual Sessions work together with Criminal appeals and routine civil work has to be entrusted to a Spl PPr who is a practising lawyer. He points out the names of Messrs S.K. Subba Rao,

of Mangra Cement Mfg Case 7170.

Law File No. 205 of 1934. | General and Revenue Secretaria

and S. Chinnaswami Selv. Against this the D.M. suggests the names of the marginally noted members of the bar if Govt decides to appoint a legal practitioner as Spl PPr.

Subt: for orders.

1) Mr. A. Chandrasekharan
2) " M. Sreenivasagam
3) " S. Ramanujam

TSD 18/6

1a) The mangra cement defalcation Case is a very important one and it is very likely that heavy civil disputes will arise therefrom - Already Govt have received a notice of suit from messrs B. V. Narayana Swami Iyers for Rs 9000/- odd - There is another, I think, from messrs claiming nearly Rs 40000/- The Criminal case requires therefore very careful handling especially since persons interested in these firms are to be examined as Prosecution witnesses and it is to the advantage of Govt to get as much information as possible from these witnesses for the purpose of the Civil Suits. I therefore think that Mr K. Rameswami, PPr may be entrusted with this Cement Case and Special Public Prosecutor appointed for the other Sessions Cases that may come up while

7170 I 1961

Mandya Cement Case.

9

General and Revenue Secretariat.

Law File No. 105 of 1934

[App. F. III-2

Mr. Ramaswami is engaged in this case - If any of the two gentlemen suggested by Mr Ramaswami in this respect is appointed as spl PPr for other sessions cases, ~~the~~ those cases also will be conducted under the guidance & and supervision of Mr Ramaswami — This arrangement seems to me to be the best to be adopted in the circumstances.

14) If however the Dt mgte recommends to appoint a special PPr for the Cement case itself is to be approved, it is better to appoint a legal practioner of standing rather than leave the case in the hands of any two of the Police officers (Messrs D. Seshagirirao or Mr. M. S. Ranganathan) suggested by the Dt mgte

Submitted for orders

Gen Secy)
Chief Secy)

MM
18/6/34

(vi) The DMO proposes to entrust
a spl Pat Prosecutor from
the Mandl Cement Co
may be sd. This proposal
has been made in Con-
sultation with the Secretary
Judl. The D.M may be
requested to show cause if
the there is any objection to Commend
The D.M further wants that
Mr. S. K. Madhava Rao, ASP
who is acting as DSP
may be directed to instruct
the spl P.P Mr Madha-
Rao will be waiting as
A P a bout the beginning
of July & the I.G of P
would like that he could
spare him to assist Rao

Serial No.

Mr Madhava Rao ... Supdt
of Jr Rooms ... when the
Case was repeated and
he is fully conversant
with the details of the
Case & D. No.
Proposal in this regd
may be ...

F.A
21.6

1st Mr)

for a pps

for issue

pnl
25/6

2) KPM
25/6

3) Issue today
pnl
26/6

To,

The D.M. Mysore

no. P. 7127 d 26.6.35 informing that
Govt agree that a Spl GPr may be
appointed for the case

Copy to G.G.P.

from,

The D:M. Mysore

Cr. 2736/1935 d 29.6.35 stating
v. Mr. S. Ramanuja Iyengar, Adv. may
appointed as Spl PPr at the usual rate
remuneration; and that Mr. S.K. Mathew
S.P. may kindly be directed to rehear
briefly the D.S.P. Hunsur Road, case
submitted with a draft G.O. sanctioning

Mandya Cement Case

140/42

13

General and Revenue Secretariat. | Law File No. 205 of 1934 | [App. F. III-2

To,

The D. M. Mys.

D. S. S.

Comptroller

BB. Mys.

S.O. no. P. 66-67 Law 205-343 d. 3.7 according sanction to the appointment Mr. S. Ramanujayyangar as Spl BB

Dear,

The D. M. Mys.

no. S1. 2731 pass d ~~agreed~~ 1.7.35 and that in a leave vacancy is not possible to get an adjournment of the Case in and requesting in the Circumstances to direct Mr. Madhava Rao to proceed to Mysore immediately.

Put up with a dft forwarding a copy of this letter to the D. S. S.

Issue forthwith & resubmit

ISD 3/7

SECTION L. 1935 SECT

3/7

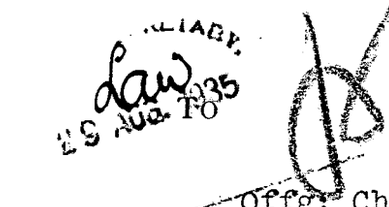
Encl.

OFFICE OF THE DISTRICT MAGISTRATE,
MYSORE DISTRICT,

Dated, Mysore 19th August *193* 5

From

B. T. KESAVAIENGAR, Esq., B.A.,
District Magistrate,
Mysore District, Mysore.



K. V. ANANTARAMAN, Esq., B.A.,
Offg. Chief *Secretary to the Government of Mysore,*
Bangalore.

SIR,

3) The case I read from the newspaper, has been postponed of yesterday 28/8

With reference to your No.P. 967/Law. 190-34 dated 8th August 1935 calling for information regarding the progress made in the Mandya Cement case before the Assistant Sessions Judge, Mysore, I have the honour to state that out of 43 Prosecuting witnesses, 40 are already examined fully and one is reported to be dead and his evidence in the Lower Court will be filed as an exhibit to be read as evidence in the case. The two remaining witnesses are the two Executive Engineers and one of them Mr. N.Subba Rao is being examined in Court. With the examination of these 2 witnesses and perhaps with the examination of one additional witness in the Court, the prosecution case will be closed.

A copy of the Judgment in the case will be sent for favour of information soon after the disposal of the case.

I have the honour to be,
Sir,
Your most obedient servant,

District Magistrate,
Mysore District.

NRS

28/8

38) According to newspaper reports Krishna Rao Shopkeeper, has been convicted to undergo 1 yr's imprisonment and Rs 500 fine and to a further period of 1 yr in the second Count, sentences to run Concurrently. Singanienger, accountant has been acquitted of all charges. - Copy of the judgt. may be sent for perusal.

37) Has no report been received from the Dt. Magte ?

DSP
3/8

40) No report has been received from the D. M. for.

TSD
3/9

41) Call for a report.

DSP
4/9

42) Dft. for up

TSD
5/9

43) Issue

DSP
5/9

SECTION
1935

Issued no. R. 1212 dt. 10.9.35

POLICE DEPARTMENT.

Tel. Address
"POLICE"

PHONE No. 298

OFFICE OF THE
INSPECTOR-GENERAL OF POLICE IN MYSORE,

When replying please quote No..... C2-275

Dated Bangalore, ...9th.....September.....*193*

FROM

F. A. HAMILTON, ESQ., C.I.E.,
Inspector-General of Police in Mysore,
Bangalore.

K.V.Anantaraman,Esq., B.A.,

Chief Secretary to the Government of

His Highness the Maharaja of Mysore, Bangalore.

SIR, Mysore 1319

In continuation of this office No.C2.275/34 dated 1st April 1935 re. th se of misappropriation of cement in the Executive Engineer's Office at Mandya, I have the honour to state the trial of the case began on the 16th July 1935 before the Assistant Sessions Judge, Mysore and the trial continued till 21st August 1935. The judgment was pronounced on the 28th August 1935.

2. The Special Public Prosecutor moved the court to separate the trial of the accused - one for the offence of Forgery and Falsification of accounts and the other for the offence of misappropriation and add two more counts of misappropriation against the first accused R.Krishna Rao, and add abetment of two more counts of misappropriation against second accused M.Singra Iyengar and begin the trial of three counts of misappropriation against the two accused.

3. But after hearing both the parties the court decided to frame the two additional charges of misappropriation against A1 and their abetment against A2 and hold the joint trial for all the offences under Sec.239(d) Cr.P.C. The result of this order was that A1 was tried for Forgery - Falsification of accounts and three counts of misappropriation, whereas the A2 was tried for abetments of 3 counts of misappropriation.

4. The Learned Assistant Sessions Judge held that there was not sufficie evidence to convict A1 for forgery though there was sufficient material to hold hi guilty for abetment of forgery and acquitted him of that charge. He held him guil of the three counts of misappropriation and sentenced him to R.I. for one year and

and fine of Rs.500/- on each of the said three counts in default to suffer R.I. for 6 months more He held him guilty of falsification of accounts also and sentenced him to R.I. for one year and fined of Rs.250/- in default to R.I. for 3 months. Taking the age of the accused into consideration the Judge ordered the sentences to run concurrently.

5. As regards the 2nd accused M.Singra Iyengar, the court held that there was not sufficient evidence to warrant a conviction and acquitted him of the charges.

Serial No.

From,

The Dr. Magte Mysore

no. Cr. 235/3536 dt 18.9.35 requesting instructions in the matter of moving the H.Ct. for Enhancement of sentence passed on the accused in the Lower Court.

50) The D.M. Can himself move the H.Ct. for Enhancement of sentence under sec 438 Cr. P.C. The appeal filed by the accused to the Sessions Judge, is said to have been posted to 21st inst. Result of the same may perhaps be awaited. Meanwhile the S.A.D. may be consulted whether this is a fit case in which the remaining Charge may be pressed against accused 2 & 3

TSD 20/9

51) Where is the copy of the Judgt? DRL 20/9

52) Copy of the Judgt rec'd from the D.M. has been placed in the file relating to the notice issued on behalf of Mess. Narayana Swami & Co. Cement Contractors, and sent to the Govt.

TSD 21/9

53) Let its return be awaited for a few days. It is not possible to consult the Govt without the Judgment copy

Law File No. 205 of 1936. | General and Revenue Secretariat

(4) Copy of the Judgt in the Mandya Cement Case put up.

Subs for orders

B.D. 24/10 (3) H.C.R.V.P. 22 of 35 dated 24.10. forwarded with compts to the Govt advocate for favour of opinion regarding moving the High Court in revision to enhance the sentence passed on the 1st accused and for advice regarding the other points raised in the D.P. under letter of 18 Sept 1935 -

B Yoseelao
24/10

Returned with compliments.

(5) The Judgment of the appellate Court is not available in the file. The learned Assistant Sessions Judge has sentenced the 1st accused to one year's Rigorous Imprisonment and a fine of Rs.500/- on each of the three counts under Section 409 I.P.C., and for six months Rigorous Imprisonment in default of payment of fine.

Under Sec.477 A. he is sentenced to 1 year's Rigorous Imprisonment and a fine of Rs.250/- and 3 months R.I. in default of payment of fine.

As the sentences are directed to run concurrently the 1st accused will have to serve out 1 year's R.I.,

and

Serial No.

and pay a fine of Rs.1750/-. I do not think the fine will be paid and he will have also to serve out the period awarded in default of payment of fine.

As has been laid down in 9 Mysore Law Journal 442 & 10 Mysore Law Journal 238, the direction that the sentences should run concurrently could apply only to the substantive sentence.

Under these circumstances this does not seem to be a fit case for applying for enhancement.

Government Advocate.

CSN/30.10.35

51) This will be communicated to the Dt.Supdt Mysore. As regards the question of pressing the other charges pending against the 2nd accused Singra Anjan, who has been acquitted, I think there is no use of taking any further action in the matter as there seems to be no case against this

3053

1912

Law File No. 205 of 1934.

General and Revenue Secretariat

62) Dft sub?
TSD 8/11

63) Issue
pre
8/11

To,

The D. M. Mys

no. P. 3055 d. 7.11.35 enquiring regd
the Sessions Judge has passed order on
the appeal.

Sus/R
8/11

Please reminded on 15/11/35
a routine reminder
was sent on 15/11/35
pre
21/11/35

64) Dft R? sub?
TSD
21/11

65) The D.G.P has reported the
disposal of the appeal - Please
put it up
pre
21/11

66) Dft is placed below.
TSD
21/11

67) We have received reply from the
Dcn today. Please work up & submit
early
pre
22/11

Mandya Cement Case

4050
4051

224

General and Revenue Secretariat	Law File No. 205 of 1935	[App. F. III—2

Serial No.

From,

The D M. Mysore

no. S1-235/35 d 17.11.35 intimating that the accused Krishna Rao in the Mandya Cement Case will stand retried before the Asst Sessions Judge for diffr offences and that the Case may be posted to 25.11.35 and that the Govt. Mys will proceed with the Case

no. S3-235/35-36 d 17.11.35 informing that the Sessions Judge, Mys. has set aside the Conviction and sentence, on impredank. R the ground that the trial before the lower Ct was illegal on account of misjoinder of Charges and that the

Law File No. 205 of 1935. | General and Revenue Secretariat

19) The DC mpkt's letter of 17th Nov^r (PUD I) is submitted for perusal. Apparently he now thinks it better to entrust the conduct of this case to the PP, mr Ramaswami, instead of to the Spl PP mr Ramanjaneyulu. Kindly see is invited to paras 18 & 19 supra.

(Gen Sec) MC 22/11

20) For perusal. The letter will be acknowledged and the DC informed that Govt. note that Mr Ramaswami Public Pros^r will conduct the prosecution

In the Mauriya Cement defalcation case the Sessions Judge ordered re-trial and referred the case back to the Assistant Session Judge I then moved the Sessions Court to withdraw the case from the Assistant Sessions Judge and transfer it to the Additional Assistant Sessions Judge for trial and disposal The special sanction of the High Court was necessary for this purpose. There is an order of the High Court that the Small Cause Judge who is empowered as Additional Assistant Sessions Judge should not be saddled with Criminal Work The Sessions Judge made a reference to the High Court. Orders were received this morning transferring the case to the Additional Assistant Sessions Judge The trial must commence in January 1936. In ordering the retrial the learned Sessions Judge has directed that the accused should be tried on all the charges framed against him if necessary charges may be split up On the charge of forgery the accused was acquitted by the Assistant Sessions Judge Now he has to be tried on that charge also

But there is no illegality in the direction made by the Sessions Judge. Sec. 403 Cr. P.C. does not apply to a case in which the appellate Court orders a retrial vide Sec 423 Cr. P.C. As the result of the remand over the whole Case is re-opened. Please refer to

A.I.R. - 22 Cal. 377 P.T.O.

G.R.S. III—3]

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

This note was sent to me by the PP, enquire through his junior one P. Subbarao.

This is to explain the doubt I expressed in a discussion with him last Sunday as to the possibility of a Retrial on the charge of forgery when there was an acquittal on this charge by the Asst Sessions Judge & this acquittal was not appealed against by Govt

This note may be kept in the concerned file

28/11/35

Mandya Cement Case

405/
2/6 3199
3266

General and Revenue Secretariat | Law File No. 405 of 1936 | [App. F. III—2

Serial No.

To,

The D.M. Mysore

no. C. 3405 d 22.11.35 Calling for a copy of the order.

From,

The Dist. Mgs.

no. 618 d 29.4.35 intimating that the Mandya Cement Case has been transferred to the file of the Addl Asst Sessions Judge and that the retrial may Commence on 2.1.36

72) Submitted for perusal with reference to para 70 supra

TSD 2/12 73) Please put up the copy of the Govt received today

TSD 2/12

From,

The Dist Mgs

no. 619 d 30.11.35 forwarding a copy of the Judgt passed in the appeal filed by Krishna Rao.

TSD 74) Submitted for perusal.

TSD.

15) The Judgment of the Sessions Judge Mysore, directing a retrial in the Mamoja Cement case is submitted for perusal. Important portions of it have been marked by me in blue & red pencil for easy reference. It is a pity that in a case of this magnitude there should have been a mistake committed in the framing of the charge by the Asst Sessions Judge (Sri: G. Paramasivaiah)

Gen Secy) Inf 3/12 pm

Chief Secy) pm 3/12

E-S. Prot^r. 3/12

Bm

4/12/85

16) There has been misjoinder of charges as well as of parties. The Committing Magistrate framed against the 1st accd charges of, forgery of an indent order misappropriation of 200 bags received in pursuance of such order, & falsification of 3 entries in the account books to screen the forged order & misappropriation. A charge was framed against the 2nd accd of abetting the 1st accd in misappropriating this Cement.

Serial No.

At the trial in the ~~Additional~~ Special Assistant Sessions Judge's Court, the Public Prosecutor applied for separating the trial of the two accused, & also applied for adding two more charges against the 1st accd of misappropriating two other items of Cement. The Counsel for 2nd accd also applied for separating the trial of two accd. The Asst. Sessions Judge however did not allow the applications for separation of the trials of the accd. He further went on to add the two additional charges of misappropriation against the 1st accd & two similar charges of abetment against the 2nd accd. As the misappropriation of the three items of Cement were separate acts or transactions, ~~misjoi~~ misjoinder of charges was patent, & as the transactions are different there is misjoinder of parties. Greater care would have been expected on the part of the Court especially when the parties want the trials to be separated & the Committing Magte has pointed out to the Sessions Judge how he has failed to refer to the provisions of law & Commentaries before framing the charges

Letter No: 777 dated 15 Jan 1936 from the P.P. mysore forwarding copy of Judgment passed by the assistant Sessions Judge mysore in case No: 1 of the Mandya Cement Cases

2) Three separate cases are being tried. The Judgment now pronounced is in case no: 1 relating to Cr. breach of trust committed on 6-6-34. The accused Krishnadas is sentenced to R.I. for one year and a fine of Rs 40 In the Judgment the learned Asst Sessions Judge has made very severe observations against the negligence of the P.W.D officers at Mandya. Important portions are marked in pencil. The Judgments in the other pending cases may perhaps now be awaited.

Submitted for perusal.

General and Revenue Secretariat | Law File No. 205 of 1936. | [App. F. III—2

Serial No.

From,

The Dist. Magte
Mysore

No. 863 dt 5.2.36 stating that the Addl Asst Sessions Judge has delivered judgt in the second case against Krishnarao (S.C.C.[illegible]) and that he has opined that the order of the Sessions Judge directing the release of the accused for forgery was wrong as the subsequent bind for that offence was based by the Sessions Dist. and suggesting that a revn petn may be filed in the H. Ct. against this order.

1) Submitted for perusal in the first case. Copy of the judgt may be awaited.

TSD 6/2 2) Please ask the PP to send copy of the order of the AS which he wants to be revised by the High Ct.

PP

The D.C., Mys

no. 876 dt 7.2.36 forwarding a C/s of the Judgt in S.C. 435-36 on the file of the addl Asst Sessns Judge, Mysore (Smt vs R. Krishna Rao)

D.O. no. 876 dt 8.2.36 pointing out in the circumstances stated that the finding of the addl Asst.Sessns Judge that the prosecution for the offence of forgery was barred under sec 403 Cr.P.C. is illegal Judgt in the 2nd Case agst R. Krishna for perusal. The accused was chd under S. 467, 409 and 477 (A) I.P.C., invited to para 20-22 of the Judgt. & has observed that the Sessions Judge to set aside an order of acquittal passed by a Court of Competent jurisdiction the accused cannot be convicted of any of the offences under sec 467 I.P.C. The accused is however guilty of how the alternative charge of 381 I.P.C., and sentenced to undergo and a half and to pay a fine of Rs 50

Serial No.

The sentences are directed to run Consecutively
The Govt. Mysore points out that the finding of the
Addl Sessions Judge in acquitting the accused for offence
of forgery is illegal and recommends that a revision
may be filed in the H.Ct. This involves an
important question of law and the G.A. may be
Consulted in the matter

TSD. 11/2 86) The reference from the Dewan may be awaited till the end of this week

DSP 11/2/36

From

The Dy. Regr. Mysore

no. G3. 335/35-36 dt 8.2.36 forwarding the reports of the Govt Mys and the D.S.P. and stating that the accused has been Convicted and sentenced to imprisonment and fine

85 The D.S.P. reports that the accused has appeal against the Conviction and sentence passed under s 409 I.P.C. in the former Case.

Subs for perusal and orders with ref to para 83 Supra.

TSD. 13/2 86 As explained in para 77 supra, three Separate trials are being conducted against the accused Krishnadas in

What is known as the Mangalore Cement Defalcation case. In trial No: 1 relating to Criminal breach of trust committed on 6.6.34, he was convicted to R.I. for 1 year & a fine of Rs 400/-. In trial No: 2, he has been tried for (i) forgery under sec 467 (ii) Cr^l breach of trust committed on 28.1.34 in respect of 200 bags and (iii) fabrication of registers under Sec 477A. The Addl Asst Sessions Judge finds that all the three offences are proved but convicts the accused only under counts (ii) and (iii) alternatively & sentences him to R.I for 1½ years and a fine of Rs 500/-. As regards the offence of forgery, the acquittal holds that the order of the learned Sessions Judge directing a retrial in respect of this offence to be one passed without jurisdiction, ~~and accordingly treated~~ since he was not competent to set aside an order of acquittal passed by the Asst Sessions Judge (vide Para 17 The P.Pr, mysore in his letter of

5th Febr 1936 contends that the order of the Addl Asst Sessions Judge is wrong & that he could not sit in judgment over the order of the Sessions Judge directing the retrial ~~that on merits~~ He therefore says that this is a fit case for being taken in revision before the High Court The Dt right myself however does not make any specific recommendations in the matter but merely forwards the Pt's letter.

On merits I am inclined to agree with the Pt. As observed in 13 mys Law Journal 48, when the whole trial is vitiated by a misjoinder, the order of acquittal passed ~~need not be set~~ need not be specifically set aside before directing a retrial. The order of acquittal is void & of no effect. It is also to be observed that the Addl Asst Sessions Judge has acted beyond his powers in questioning an order of a Superior Court. But the question is if this is now a case to be taken up in appeal or revision to the High Court when the accused has been sufficiently punished on other counts. The points

of law raised is however of some importance. If approved the views of the Govt advocate also will be ascertained in the matter.

1st member) / sd/ 13/2/36

(89) Yes

Spr 14/2

Forwarded with compts to the Govt advocate for favour of opinion

By order

14.2.36

Returned with compliments.

D) The learned Sessions Judge in appeal ordered a retrial of the whole case against accused 1 and also expressly directed the retrial of the offence of forgery having in view 13 Mys. Law Journal 48. That order was not questioned by the accused by means of an appeal or revision. The learned Assistant Sessions Judge should have therefore complied with the directions of the learned Sessions Judge and should not have questioned the legality or propriety of his order as observed in the 13 Mys. L.J. case at page 54 - If the trial is illegal, the acquittal has no legal effect and it is not necessary that the

acquittal should be formally set aside. 40 Cal. 163 also supports the view that when a retrial is ordered the whole case is reopened

Though the view of the learned Assistant Sessions Judge does not therefore seem to be correct, I do not think it is necessary to file an appeal against the acquittal as the accused has been convicted on other counts and subjected to a sufficiently severe sentence of imprisonment and fine.

Government Advocate.

CSN/20.2.36

92) Submitted for perusal & orders. Reg^d paras 88 and 89 above.

Govt Advocate) 24/2/36

The Govt Advocate's view may be accepted.

24/2

24/2

Asst Member)

93) 24/2

Dewan)

94) 25-2-36

26/2

D 02553—50,000—GPB—8-7 30

96) Draft ready 26/2

To,

The D.M. Mys.

No. P.S.3/39 dt 28.2.36 informing that Govt see no reason to take further action in the matter of filing of any appeal or revision C/s to the Sr. Mys

From,

The Sr. Mysore

No. 998 dt 9.3.36 intimating that Criminal Appeal 92/35-36 (R. Krishna Rao vs Govt) on the file of the Sessions Ct Mysore was dismissed and the Conviction and sentence Confirmed

Mandya cement-defalcation case — withdrawal of offn pending in Mandya.

General and Revenue Secretariat — New File No. 205 of 193 4. [App. F. III—2

Serial No. 8

From
The Distt Magistrate
Mysore Distt

Letter No. G. 3-235-37 28.8.36

Requests concern for the withdrawal of the case pending against Krishna Rao before the Addl Sess Judge, Mysore and also for the withdrawal of some of the charge sheets pending before the Mandya Magistrate.

Submitted for orders with previous references. The question of withdrawing the charge sheets before the Mandya Magistrate was reserved for consideration later on. (vide paras 7 & 11 of the note in Law Dept 123-35 placed below).

The copy of judgment in crl appeal before the Sess Judge, Mysore had not been sent along with the letter.

25-8-36

39 Mandya cement - Regularisation
with withdrawal of other pending charges

Law File No. 205 of 193 4 General and Revenue Secretariat

16) Copy of Judgment since received is placed in the file & submitted.

Lee 4/9/36 JMC

107) The Public Prosecutor — Mr. K. Ramaswamy's letter copy of which is sent with the P.V.D explains the circumstances under which the present recommendation for withdrawal is made. The recommendation is reasonable & may be accepted. This would mean that all the pending cases still pending in the Mandya Munsif's court or before the Asst Sessions Judge will be withdrawn except one or two in which it is possible to fix the liability of the Receivers of Cement.

Mandya Cement Defalcn Case 139/140

General & Revenue Secretariat. | File No. Law 205 of 1934. | [App. F. III–2

Serial No.

112) Subd a dft for approval
SB
14/9
MBR

Typ Sec (XXX)
JBK
15-9-36

113) Fair dft please
BDR
15/9

114) Subd with a typed dft for approval
SB
15/9
MBR

TYPING SECTION 15 SEP. 1936 GENL & REV. SECTT.

Gen Secy)
BDR
15/9

115) Issue
16/9

GENERAL SECRETARIAT 16 SEP 1936

116) Issue
BDR
16/9

TYPING SECTION 16 SEP. 1936 GENL & REV. SECTT.

Sec C
21-9-36

No I 1922, dt 17-9-36.

From

The D.C. Mysore

Letter no G1-902/36-7, dt 19-1-37 State that 11 charge sheets were withdrawn and the remaining 5 were selected for fixing the liability of the Receivers & the same which have been transferred to the file of Spl Dist Magt, Mysore, and Requests Sanction to utilise the Services of the P.P.

Reference para 107 supra

117) D.O. Letter No. 1922, dated 16th/Sept. 36 (Flag J) we

Requested the Dist Magt Mysore to withdraw the charges still pending ag except a few in which it may be possible to fix the responsibility of the Receivers. The Dist Magt, Mysore states in P.U.P. that 11 charge sheets were withdrawn and the remaing 5 were selected for fixing the ~~Responsibility~~ liability of the Receivers. The said 5 cases are reported to have been transferred to the file of the Spl First Class Magt, Mysore which are posted for hearing on 25th January 1937.

118) The D.M. Solicits Sanctn of Govt to utilise the services of the P.Pr Mysore to Conduct these cases as he is fully conversant with the details of these cases. A draft Sanctioning the proposal is put up for approval or orders.

119) In view of the fact that the police officers who investigated the cases are not readily available to help the Prosecuting Inspector, and for the reason that the P.Pr who is quite conversant with the nature of these case will be able to Conduct these complicated cases more satisfactorily, the District Magis state

General & Revenue Secretariat.

File No. Law 205 of 1934. [App. F. III–2

Serial No.

Recommends that sanction may be accorded to engage two Services Spl. P.P. to conduct the cases before the Special Magistrate's Court. The recommendation of District Magistrate may be accepted

120) Draft G.O. is put up for approval

121) [illegible] BSR 22.1.37

Gen. Secy. 22/1/37)

Today. BSR 22.1.37

Hon'ble Member)

122) J/2 22/1

[illegible]

From [illegible]

the P. P.

Mysore

D.O. letter no. 110.2/[illegible]/25-23-37

States that he (with Advocate's report) he consulted the investigating officer who is of opinion that there is not sufficient evidence to prove the case against the Accountan and the typist, and that he will submit his report in the matter

Subd. the Report may be awaited

(2-7) Pomé up on 5.3.37)

If interim report is not received by then

BM
2.3.37

Mandya Cement Adulteration Case

Serial No.

129) Submd The linked file will be returned to the K. R. Secrt if approved Further progress of this Case will be watched

10/4

130) Yes BVR 10.4

From

The P. Pr., Mysore

Letter no 11, dated 4-7-37

forwards a copy of the judgment passed in C. C. Nos 24, 214, & 215/36-37 on the file of the Spl I class Magt, Mysore (Govt vs R. Krishna Rao)

131) The copy of the judgment (Flag Y) is submitted for perusal.

132) In the penultimate para on page 5 of the judgment (portion marked in red pencil) the learned Magistrate has opined that the criminal liability of Mr K C Pathy (PW 21) appears to require investigation The P. Pr has addressed the Distt Magt in the matter. Further communicn may be awaited

133) Kind Reference is invited to P. Pr's letter Flag 7 wherein he states that the question of taking action against the Accountant

WD 2017—GPB—30,000—8-9-36

Mandya Cement defalcation case 10393

45

Laws File No. 205 of 1934

General and Revenue Secretariat

Serial No.

and the Typist may be deferred till the disposal of all the cases. Now that all the Case are disposed of the P.P. may perhaps be Requested to Suggest the Course of action to be taken against them.

Submitted

134) Charge Sheets were placed against Store keeper Krishnarao in C.C. Nos 211, 212, 214 and 215, and against Krishnarao, Sunigra Iyengar and Krishnaswamy in C.C. No. 213, on the file of the Special II class Magistrate's Court. The four four cases against Krishnarao only, have now been disposed of. The other case (C.C. No. 213) against Krishnarao, Sunigra Iyengar and Krishnaswamy is not yet taken up.

135) In regard to C.C. No. 213. the PP wrote on 25.2.37 that the Survey officer is of opinion that there is not sufficient evidence to press the case against the accountant (Sunigra Iyengar) and the Typist (Krishnaswamy), and that he has not however come to any decision

Serial No.

himself, and that after the other cases are disposed of, he will make a report stating definitely whether the charges against them are worth pressing

135) In this connection, kind reference is invited to paras 57, 59 and 107 supra. Seems to have been decided that there was no use in pressing other charges against Singra Iyengar. As is evident from para 107, even the other charge sheets now pressed against Krishnaraj, were pressed not with a view to secure his conviction (he had already been sufficiently punished), but with a view to fix, if possible, the liability of the receivers of cement. These cases have served their purpose, and the P.P. writes in the P.U.D. that the District Magistrate has been addressed to initiate such further action, as he deems fit, to proceed against some of the receivers of large quantities of cements bags belonging to Govt.

137) File mitted for orders whether the opinion of the P.P. should be called for about the desirability or necessity of proceeding under C.C. 213 or whether in pursuance of paras 57, 59 and 107 supra the case may not be pressed

103

Kavidya Cement defalcation case

Law File No. 205 of 1934

General and Revenue Secretariat

Serial No.

Subd with a dft for approval

Ltr as revised

BHR 13/7

Issued no P. 239, dt 14-7-37

TYPING SECTION 13 JUL 1937 GENL & REVENUE

Secy A 14-7-37

From

The I.G. of Police

Ltr no C.2-275/34-35, dt 14-7-37

that C.C. Nos. 211, 212, 214, & 215/36-37 the file of the Special 1st class Magt., Mysore disposed of convicting and sentencing accused R. Krishna Rao to two years R.I & reports that action is being taken to issue Case against the Receiver at Mys

Mandya Cement defalcation case 1.C.6

General & Revenue Secretariat. | File No. Law 105 of 1937. | [App. F. III–2

Serial No.

Reference. Para 138

Public prosecutor's letter (P.W.D. II) is for perusal

He writes that under the orders of the District Magistrate, the case against R. Krishnaiya, Sriyra Iyengar and Krishnaswamy were withdrawn on or about 5.5.37 and the accused were discharged.

No further action therefore seems necessary now.

BMR 20.7.37

Gen. Secy. 23/7/37

BMR 23.7.37

Hon'ble Member

26/7

27/7

POLICE DEPARTMENT.

When replying please quote No. C.C. 54/34
End. Cir

OFFICE OF THE
INSPECTOR-GENERAL OF POLICE IN MYSORE,
Dated ~~Bangalore,~~ Camp. Mysore. 20th Octr, 1934.

2305(2)/34
P

FROM

K. V. ANANTARAMAN, ESQ., B.A.,
Offg. *Inspector-General of Police in Mysore,*
Bangalore.

To

OFFICE OF THE FIRST LEGISLATIVE COUNCIL
23 OCT. 1934
No. 3215

R. Ranga Rao, Esqr., B.A., B.L.,
Chief Secretary to the
Government of Mysore, Camp. Mysore.

SIR,

I have the honour to enclose herein, for the information of Government, a copy of the report received from the District Superintendent of Police, Frenchrocks, in Mandya Range Crime No. 16/34-35 under Section 409 Indian Penal Code.

I have the honour to be,
Sir,
Your most obedient servant,

K. V. Ananthaman

Letter No.Cr.16/34-35 dated 14th October, 1934 from the District Superintendent of Police, Frenchrocks, to the Inspector General of Police in Mysore, Bangalore.

With regard to the facts of crime No.16/34-35 of Mandya Range under section 409 I.P.C., I have the honour to state as follows:-

Mr.N.Subba Rao was the Executive Engineer in charge of No.5 Division, Irwin Canal Works, Mandya, from 21-9-31 to 26-3-34 except with the interval of 1 month and 2 days from 24-12-31 to 26-1-32 when Mr.B.Krishnaswami Iyengar of Krishnarajasagara Works was in charge. On 26-3-34 Mr.C.T.Narasimha Iyengar took charge and continues to be there even now.

Mr. M.Singra Iyengar was the accountant and one R.Krishna Rao was a clerk in the same office. On 16-7-32 the store-keeper Mr.Narayana Rao was transferred and R.Krishna Rao became the store-keeper. Krishnaswami was the typist in the same office. In the beginning the D.P.W. were said to be using "SURKI CONCRETE" for hydraulic works and as the quality of that kind of concrete was found unsatisfactory the authorities decided to use cement for such works and large quantities of cement had to be got for works. From July 1932 to September 34 they appear to have got cement of the value of Rs.20,598/- and actually paid Rs.12,579/-.

The Stores Purchase Committee approved of Messrs. B.V.N. & Co., to supply cement for works to this Division as well.

There appears to be an order of the Store Purchase Committee that all consignments sent by Railways should be booked "Paid" and not "To Pay" but if it is sent "To Pay" the company sending the consignment should remit the cost of Railway freight to the officer in advance to enable him to pay the same here and take delivery of the goods.

The Executive Engineer had issued instructions to the Post Master, Mandya, to deliver Insured letters and Money Orders received to his official address to the hands of the

While placing the order for the supply of cement the office was expected to take the stock on hand and the quantity for which indent naa been received from the subordinates into consideration and decide the quantity of cement to be indented

When the supply was received and the bill was also received at the office, the accountant should compare the Indent, the invoice, and the bill and after checking and satisfying himself that the quantity was indented for and it was actually received at the stores he should admit the bill and the Executive Engineer would pass the bill and send it to the Comptroller for audit. The party would be informed accordingly. When the bill is audited, it would be given to to the Firm for encashment in the Treasury. In some instances the bills are negotiated through the Bank of Musore-Bangalore, and book adjustments are made.

Half yearly counting of stock articles is effected and entries are made for having done such things.

The receipt and expenditue of stock are notea in a register and at the close of the month balances are struck.

The above is the procedure to be adopted in every Executive Engineers' office in such matters.

Genesis of the case.

When things were being thus managed, a pseudonemous petition was received by the Chief Engineer to the effect that both the Accountant and the store-keeper of the said office were mis-handling the articles in the stores etc. The petition was handed over to the Executive Enginser Mr. C.T. Narasimha Iyengar for verification on 18-9-34 by the Deputy Chief Engineer. As he was very busy with the Inspections a other urgent work, he went to the stores on 22-9-34 on a plea of examining the question of accommodation in the store

to stock large quantities of cement bags and counted the stock of cement on hand and found 398 bags of cement in all.

On 3-9-34 he had counted the same towards half yearly counting and had recorded 793 bags of them as having been found on 3-9-34. He took the issues into consideration from 3-9-34 to 22-9-34 and calculated the balance that should have been on hand to be 647 bags of cement deducting the stock on hand, he found 249 bags of cement short in the stores.

The Executive Engineer wanted to compare this figure with the book balance but that register called "A" Form Register had not been posted from 1-7-34 up to that date. So he sealed the rooms in which articles had been stored and sorted all the records found in the office room of the store keeper to enable the account clerks to post the "A" form register.

In this sorting work several bills and receipts of the Firms and indent copies etc., were found and they were all kept in the personal custody of the Executive Engineer. The Accountant took about a day to post the "A" Form Register and strike the balance on hand on 23-9-34 comparing the book balance and the actual balance the officer found that there was a shortage of 1335 bags of cement from the stores. He lodged the complaint before the Local Police and handed over the accused to the Police. (Store keeper).

A case was thus registered on 23-9-34 under section 409 I.P.C. by the Inspector of Police, Mandya.

STEPS TAKEN BY THE POLICE.

1. The accounts were got audited by the Government Auditors of the Comptroller's office.

2. The original indents sent to the firms of Messrs. B.V.N. & Co., Bangalore City, and M.N.Hussein & Co., C. &.M.Station, Bangalore, were taken possession of.

3. The office drafts or their "To" register extracts were taken from the Executive Engineer's office.

Steps were taken to recover Rs. 1,174-2-6 from three persons who had purchased cement etc., from the accused (Store keeper).

The building materials on the site at Mandya belonging to the accused (Store keeper) were seized. The cost thereof was estimated to be Rs. 860/-.

The store-keeper himself had produced Rs. 200/- before the Executive Engineer on 23-9-34.

The Accountant, the store-keeper and the typist of the office were arrested.

The particulars of Railway consignments from Bangalore and other places to Mandya and from Mandya to Mysore were collected relating to the case.

Particulars relating to the insured letters addressed to the Executive Engineer at Mandya and those sent out by the store-keeper were also taken.

RESULT OF ACTION TAKEN.

The Auditors reported that 1347 bags of cement were ccounted for in the stores. Cost of this at Rs. 3-6-0 bag comes to Rs. 4,546-2-0.

The balance outstanding to be paid to Messrs. B. V. N o., is Rs. 8,009-4-0 towards cost of cement supplied.

The cost of zinc sheets etc., still to be paid to srs. M.N. Hussein and Co., Bangalore, is Rs. 3,250-4-3.

So, the total sum to be accounted for by the accused Rs. 15,805-10-3.

A sum of Rs. 156-10-9 has been paid towards interest the balance due to Messrs. M.N. Hussein & Co., by the re-keeper towards the accounts of the Executive Engineer. um of Rs. 176/- has been paid towards interest by the accused ilarly to Messrs. B.V.N. & Co.

There were genuine and bogus indents sent to the ms and supplies made thereon. No doubt payments are e for the supplies made on genuine indents. But there instances to show that supplies made on even bogus ents are accepted and paid for by the Executive Engineer.

Some consignments received at Mandya as per bogus ents have been rebooked from Mandya in the same waggons to

Mysore without unloading at Mandya by the store-keeper.

The accused has sent insured letters to others of the value of Rs.5,494/- in these 18 months.

Though there was an instruction to the Post Master from the Executive Engineer that money orders and insured letters should be given to the hands of Mr.M.Sinara Iyengar, untant. more than one insured letters were actually delivered to the Store keeper and in some instances contents of those letters were brought to cash accounts and the Executive Engineer has owledged the same without objecting to the delivery of such insured letters to the store-keeper and thus it became usual for the store-keeper to receive all such articles and registered covers as well. The Railway receipts relating to the consignments addressed to the Executive Engineer were generally endorsed on the back of them by the Store-keeper "For the Executive Engineer" and goods taken deliveru of by himself without the knowledge of the officer.

The original indents were never taken into consideration by the accountant while checking the bills received from the Firms or passing the claims. Whether the goods for which bills were passed was actually received at the stores or not was not verified by the Accountant and the assurance of the store-keeper was accepted and the bills passed.

MODUS OPERANDI.

When any indent was placed and a supply was made thereon the company used to send a bill of cost for payment.

The bill, if in order, in the opinion of the accountant would be passed and an intimation is given to the company. The draft is approved by the officer. In the fair copy typed by the typist - generally some space is managed to be left between the last sentence of the typed matter and the signature of the officer. After the signature is taken

to the fair copy, some sentences are later on added, asking the firm to supply more articles. The company considers this as the 2nd indent and supply is made thereon. In some instances, this full supply is misappropriated by the store-keeper and in others a part of it has been taken to stores and paid for by office; when any reminders are received for payment of bills, and a bonafiae reply goes to the firm on any other subject and the signature of the officer is taken- opportunity is taken to interpellate another sentence to the effect that pending bills would be paid for fully when further allotment is received etc., In some instances money was paid in cash by store-keeper in person either to the Company or to the Bank towards their account.

If only the accountant had taken care to secure the original indents and compared them with the invoices and the bills, there would not have been any chance for the store-keeper to play this mischief. Again if the instructions to the Post master to deliver insured covers to the Accountant had been

Further investigation is proceeding. As the remand of 15 days was over for the 1st accused, preliminary charge sheet was placed against the store-keeper and the typist on 8-10-34 under section 409, 463 and 477 A. I.P.C.

"COPY"

Inspector General of Police.

IN THE COURT OF the Special 1st Class Magistrate
MANDYA.

Complainant *Versus* *Accused.*

Government. R. Krishna Rao & two others.

I, B. Subrahmannya Sastry, Special - - Magistrate of Mandya

hereby charge

you A1 (R. Krishna Rao, Store-Keeper)

as follows:—

1. That you, on or about the 11th day of December -- 1933, at Mandya, forged Ex. P. 164 (a) which purports to give an - - - authority to Messrs. B. V. Narayanaswami & Co., Bangalore to deliver moveable property, viz, cement bags,

and thereby committed an offence punishable under Section 467 of the Indian Penal Code and within the cognizance. of the Sessions Judge, Mysore

2. That you on or about the 28th -- day of January -- 1934, at Mandya, being entrusted with cement bags, as store keeper -- of the office of the Executive Engineer, Irwin Canal Division, Mandya committed in your capacity as a public servant as such store-keeper criminal breach of trust in respect of 200 bags of cement received - from the above firm,

and thereby committed an offence punishable under Section 409 of the Indian Penal Code, and within my cognizance.

3. That you on or about the 11th day of December 1933 as store-keeper
193 , at Mandya wilfully and with intent to defraud made the false entry No. 1039 that is, Ex. P. 55 (d) on 28-1-34 made the other two entries Ex. P. 51(f) and 57(k) in the Daily Register of Receipts stock and the measurement book of the above office

and thereby committed an offence punishable under Section 477-A of the Indian Penal Code, and within ~~my~~ the -- cognizance.

And I hereby direct that you be tried on the said charges

Dated the 26th - - day of March 19

FIRST CLASS MAGISTRATE'S COURT MANDYA.

Charge
Sections 221, 224. C. P. Code

Form No. 28 Criminal.

IN THE COURT OF SPECIAL FIRST CLASS MAGISTRATE MANDYA.

C.C.NO:138/34-35.

Complainant *Versus* *Accused.*

GOVERNMENT R.Krishna Rao&Others.

I B.Subramania Sastri, Special First class Magistrate of Mandya hereby charge you A2 M.Singra Iyengar S/O Srinivasa Iyengar, as follows:—

1. That you, on or about the 31st day of December 1933 or 193 , at thereabouts at Mandya, you, abetted A1 in committing breach of trust in respect of 200 bags of cement received by A1 at Mandya on 28-1-1934 from Messrs. B. V. Narayanaswami & Co., Bangalore,

and thereby committed an offence punishable under Section 409/109 of the Indian Penal Code and within the cognizance. of the Sessions Judge

2. That you on or about the day of 193 , at

and thereby committed an offence punishable under Section of the Indian Penal Code, and within cognizance.

3. That you, on or about the day of 193 , at

5687 P 33 11

POLICE DEPARTMENT.

Tel. Address
"POLICE"

PHONE No. 298

OFFICE OF THE
INSPECTOR-GENERAL OF POLICE IN MYSORE.

When replying please quote No. C. 275 54

Dated Bangalore, ...30th March,.....*193*5.

DESPATCHED 1 APR. 1935

FROM

F. A. HAMILTON, ESQ., C.I.E.,
Inspector-General of Police in Mysore,
Bangalore.

To

Rajasevasakta

CHIEF SECRETARY Protocol 1 APR. 1935

R.Ranga Rao,Esq., B.A., B.L.,
Chief Secretary to the Government of
His Highness the Maharaja of Mysore,
Bangalore.

2/4/35

SIR,

In continuation of this office letter No.CC.54/34 dated 20th October 1934 regarding cement Criminal Breach of Trust case of Mandya, I have the honour to state that the Dist.Superintendent of Police, French Rocks Circle reports that the 1st accused (Store-keeper was charged under Sections 467, 409 and 477 A. I.P.C. and the 2nd accused (Accountant) was charged under Sections 409 and 109 I.P.C.and they were committed to Sessions for trial. The 3rd accused (Typist) was discharged.

I have the honour to be,

Sir,

Your most obedient servant,

F A Hamilton

Inspector General of Police.

B. MB

OFFICE OF THE DISTRICT MAGISTRATE,
MYSORE DISTRICT,

Dated, Mysore 16th June 1935 *193*

Law 205-34-1

From

B.T. Kesaviengar, Esq., B.A.,
District Magistrate,
Mysore District, Mysore.

Urgent

Law June-1935
10/8/6

To

K.V. Anantaraman, Esq., B.A.,
Chief *Secretary to the Government of Mysore,*
Bangalore.

SIR,

I have the honour to forward herewith in original letter dated 1st June 1935 from the Sessions Judge Mysore Division in the matter of the appointment of a Special Public Prosecutor to conduct the Mandya Cement Theft case in the Court of the Assistan Sessions Judge Mysore Division and to state that this is a complicated trial involving the lengthy evidence of 42 witnesses and 900 documents and that the services of a full time Public Prosecutor during the months of July and August to study the records and conduct the case is absolutely necessary. The District and Sessions Judge has pointed out that during the months of July and August there are a number of sessions cases coming up for disposal in the conduct of which the full time of Mr. K. Ramaswamy (Public Prosecutor) would be taken up. His view is that it is better that a Special Public Prosecutor is appointed for the Mandya Cement case. Mr. K. Ramaswamy Public Prosecutor has also written to me pointing out that he has heavy work before the Sessions Judge during July and August and in case he is called upon to conduct the trial in the Mandya Cement case before the Assistant Sessions Judge he would require at least 3 weeks for preparation and that the trial of the case itself would require 30 sittings. Agreeing with the views of the District and Sessions Judge, I beg to submit that a Special Prosecutor may be appointed for the conduct of the Cement Case and having regard to the fact that Mr. K. Ramaswamy will not be

be available even for consultation during the trial of the Cement case, an officer of the Police Department may be selected for this work. I beg to suggest the names of the marginally noted Officers for the consideration of Government. If Government, however consider that it is desirable to entrust the case to a member of the local Bar, I note in the margin the names of three gentlemen from whom a selection may be made. My own view is that it is better to entrust the case to an officer of the Police Department.

I have the honour to be,

Sir,

Your most obedient servant,

District Magistrate,

Mysore District

)lice officers.

1. Mr. D. Seshagiri Rao, B.A., Principal, Police Training School, Bangalore.
2. Mr. M.S. Rangachar, B.A., Prosecuting Inspector of Police, Mysore City.

mbers of the Bar

1. Mr. A. Chennakesaviah
2. Mr. M. Srinivasa Iyengar
3. Mr. G. Ramanuja Iyengar.

Assistant Sessions Judge. I hope the Mandya
14
case is likely to take not less than two
weeks. Perhaps, it may drag on to three weeks
or more and as at present arranged, it
cannot be posted earlier than in August,
if the services of the Public Prosecutor are
to be available. If a Special Public Prosecutor
is appointed, the Assistant Sessions Judge can
post it early and run on with it. If, on
the other hand, I spare the Public Prosecutor
for that work, I will need a Special Public
Prosecutor for every case posted to July and
perhaps for cases committed during the interval.
The appointment of a Special Prosecutor for
the Mandya Case appears to be the best,
under the circumstances. If you agree with
me in this matter, you may kindly move
in the matter

For the Conduct of the Mavoya
16627
ment Case Committed to the Sessions Court
trial, I would like to suggest the
appointment of a Special Public Prosecutor,
preferably an Officer of the Police Deptt
as Public Prosecutor has to handle seven
cases this month and four more in July
as at present arranged. and other
cases are being committed to trial they
dates are full till about the end of
July, while Cases which Cannot be
transferred to the Assistant Sessions Judge.
and I am not sure how many more
Cases will be committed during the
months and July To avoid delay,
to transfer the Mavoya Case to

K. Ramaswamy,
Public Prosecutor,

Mysore.
Dated 11th June 1935.

16

D.O.No.1553. CONFIDENTIAL.

Sir,

I beg to represent that I have got Sessions cases already posted on the 13th, 17th, 21st and 27th of this month and the 3rd and 5th of next month. There are five commitments and they are not yet posted for trial. Of these the Mandya Cement Case (C.C.No.138 of 34-35 - Government Vs R.Krishna Rao and another) has been transferred to the file of the Assistant Sessions Judge. This is a heavy and complicated trial involving the lengthy evidence of 42 witnesses and 900 documents. Copies of depositions have not yet been received from the Special Magistrate's Court, Mandya. Copies of exhibits will not be furnished to me. The accused were committed on the 27th of March. The second accused is on bail and the first in remand. The trial must commence at the earliest in the 3rd week of July.

In case I am asked to conduct the trial in the Mandya Cement Case, I require at least three weeks for preparation. The services of the Prosecuting Inspector Mr.K.S.Krishnamurthy,M.A.,LL.B., and the investigating officer Mr.H.M.Nurulla will be absolutely necessary during the period of preparation and the trial afterwards. The trial itself, will, in my opinion, require 30 sittings or in other words six weeks.

During my engagement in the trial of the Cement Case it is absolutely necessary that a Special Public Prosecutor should be appointed to attend to Sessions Cases, Criminal Appeals and the routine civil work. There is an important Sessions Case of Rape in the Hassan District that will come up for trial in the last week of July. To attend to all these cases I would suggest the employment of a Practitioner who will co-operate with me and act under my instructions. I may be permitted to suggest the following

names for consideration to be appointed Special Public Prosecutor during my temporary absence before the Court of the Assistant Sessions Judge, Mysore.

(1) Mr.S.K.Subba Rao,B.A.,LL.B.,I Grade Pleader.

(2) Mr.S.Chinnaswamy Setty,B.A.,LL.B.,Municipal Advocate.

These two gentlemen have worked under me on several previous occasions particularly during my employment as Special Public Prosecutor in the Tarikere Train Collision Case.

I request that in consultation with the District and Sessions Judge and the Government suitable arrangements may be made for the conduct of my cases before the District Court and other subordinate courts if the Government are pleased to ask me to conduct the trial in the Mandya Cement Case.

Yours sincerely,

M.S.Ram[illegible]

B.T.Keshavaiengar Esquire B.A.
District Magistrate, Mysore.

Dear Mr. Anantaraman,

In continuation of my yesterday's letter No. G 1. requesting you to kindly obtain orders of Government for the appointment of a Special Public Prosecutor to conduct the Mandya Cement Theft case before the Assistant Sessions Judge, Mysore, and with reference to our conversation to-day, I write to say that in the event of one of the Members of the local Bar being appointed Special Public Prosecutor, it will be desirable to give him the assistance of Mr. G.K.Madhava Rao, who was then District Superintendent of Police, French Rocks (but who is now acting as District Superintendent of Police in a temporary vacancy, and whose services, it is ascertained will be available) to assist and guide the Special Public Prosecutor in the conduct of the case. May I therefore request you to kindly obtain orders of Government to depute Mr.Madhava Rao for the above special duty for a period of two months from 1st July 1935? The Inspector General of Police whom I have consulted in the matter is agreeable to this proposal.

Yours sincerely,
Mysore

The previous reference has been worked up & submitted for orders yesterday.

Gen Secy. 19/6
Sd in Conte 19/6/35
II Mysore 19/6
Hqrs
Chy Secy
Please put up with the other file which I sent back
19/6
19/6

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

(9)

No. P 7/27

Dated, Bangalore, 26th June 1935

From

The *General Secretary to the Government of His Highness the Maharaja of Mysore.*

To

The District Magistrate, Mysore.

Sir,

With reference to your letter No. G. 2736 of 1934-35 dated the 16th June 1935 re the conduct of the Mandya Cement Theft case in the court of the Assistant Sessions Judge, Mysore, I am directed to state that Government agree that a special Public Prosecutor may be appointed for the case at the usual rates of remmuneration. One of the three lawyers mentioned in your letter may be chosen for the purpose and further proposal in the matter submitted for the formal orders of Government.

Government have no objection to depute Mr. G.K. Madhava Rao Assistant Superintendent of Police to assist the Special Public Prosecutor as proposed by you.

I have the honor to be,

Sir,

Your most obedient servant,

Sd/- H.V. Ramasvami,

General Secretary to Government.

Memo No. P 7/28

Copy of the above is forwarded with compliments to the Inspector General of Police for information and necessary action.

By order,

for General Secretary to Government.

Appendix F G—1]

SUBJECT .....

.....

.....

ury No. of letter replied to .....

General and Revenue Secretariat

( )

the *193*

Date of issue .....

Signed by .....

List of enclosures .....

Copied by .....

Examined by .....

Section Law

File No. 20524

Serial No. 2

~~No.~~ Immediate

No P.7

To

The D.M. Mysore

Sir,

With reference to your

letter no. G. 2336 / 1935 dt. 16.6.35

re: the Conduct of the Mandya

Cement theft Case in the Court

of the Asst Sessions Judge, Mysore

I am directed to state that Govt.

agree ~~to your proposal of~~ that

~~appointing~~ a Special Public Prosecutor

may be appointed for ~~to Conduct the~~ case. At the

Vakil of the complainant

One of the ~~appointment may be~~ among

three lawyers mentioned in your

may be chosen for the purpose and

letter / ~~and the terms of his engagem~~

21 ~~drafted~~ before hand ~~before formal~~ and communicated
~~& fixed~~ before hand ~~finalised~~ for
proposals in the matter ~~sought~~ Shri
~~sent~~ formal order ?
~~for sanction of Govt being communicated~~

Govt have no objection to
agree Mr S K Madhavan Rao
to assume the Special Pn
Tax as proposed by you

Thareek

MM
28/6 Gen Secy
TSD
28/6

1.7.28

Copy to D.S.P. for information

14 P 35 22

No. G 1. 2736/34-35.
Encl.

OFFICE OF THE DISTRICT MAGISTRATE,
MYSORE DISTRICT,

Dated, Mysore 29th June *193* 5

Law 205-34-3

From

B. T. Kesavaiengar, Esq., B.A.,
District Magistrate,
Mysore District, Mysore.

To the Hon'ble
1-JULY 1935
H. V. Ramasvami, Esq., M.A., B.L.,
General
Secretary to the Government of Mysore,
Bangalore.

SIR,

With reference to your No.P. 7127/Law. 205-34-2 of the 26th instant regarding the conduct of the Mandya Cement Theft case in the Court of the Assistant Sessions Judge, Mysore, I have the honour to state that Mr. G. Ramanuja Iyengar,B.A.,B.L., Advocate, may be appointed as Special Public Prosecutor for the case, at the usual rates of remuneration and to request that formal orders of Government may kindly be obtained early for the purpose. The case stands posted for hearing to 10th July 1935 and the Public Prosecutor has been requested to move the Court for a short adjournment to enable the Special Public Prosecutor to acquaint himself with the facts of the case. Mr.G.K.Madhava Rao, Assistant Superintendent of Police may also be kindly directed to report himself to the District Superintendent of Police, French-Rocks very early to enable him to assist the Special Public Prosecutor and instruct him in the conduct of the case before the Sessions.

I have the honour to be,

Sir,

Your most obedient servant,

for District Magistrate,

Mysore District.

absent from Station

Diary. No of letter replied to .....

General and Revenue Secretariat

( )

the *193*

Date of issue 3/7/ 193 5.

Signed by M N R I P

May this be—

(i) printed ?

(ii) treated as a standing order ?

(iii) published in the Gazette, English Part ?

(iv) translated ?

(v) placed at the disposal of the press ?

(vi) published in the Gazette, Kannada Part ?

Section Law

File No. 10533u

Serial No. 4

Proceedings of the Government of His Highness the Maharaja of Mysore.

Read— Correspondence ending with the letter no. GI. 2736/1933-34 dated 29-6-35 from the D.M. Mysore soliciting sanction of Govt to appoint Mr. S. Ramanuja Iyenga Adv. Mysore as Spl. P.P. to conduct on the usual rate of remuneration to prosecution in the ~~Order thereon.—No.~~ Conduct the Mandya Cement theft Case on the file of the Assistant Sessions Judge, Mysore and requesting that Mr. S. K Madhava Rao, A.S.P. may be directed to report himself to the D.S. French Rock early to enable him to assist the Spl. P.P. in the Conduct

Sanction is accorded to the
appointment of Mr. S. Ramanujaya
Adv. Mys. as Spl. Pbr. at the asst
The D.S.B. is requested
to take necessary action to place
services of
Mr S.K. Madhava Rao A.S.P as at
disposal of the
required by the D.M. Mysore as suggd
in the letter read above

No. Gl.2736/34-35.
Encl.

OFFICE OF THE DISTRICT MAGISTRATE,
MYSORE DISTRICT,

Dated, Mysore.....1st.....July.....*1935*

Law 205-34-5

From

B.T. Kesavaiengar, Esq., B.A.,
District Magistrate,
Mysore District, Mysore.

To

H.V. Ramasvami, Esq., M.A.,B.L.,
General Secretary to the Government of Mysore,
Bangalore.

GENERAL BRANCH
3 JULY 1935
Bangalore

Sir,

Urgent

W.T.S.D.

Please look at this & see what orders are issued Hon'ble

D.no.14
3-7-35

In continuation of this office No.Gl.2736/34-35 dated 28th June 1935 re the conduct of the Mandya Cement Theft Case before the Assistant Sessions Judge, Mysore, I have the honor to state that the Public Prosecutor interviewed me in this connection today. It is learnt that it is not possible to get an adjournment of the case, as the Assistant Sessions Judge has not posted any civil cases from the 10th to the end of the month In these circumstances I request that Mr.G.K. Madhava Rao may be directed to proceed to Mysore immediately to instruct the Special Public Prosecutor. The Public Prosecutor has been requested to move the Court for commencing the trial 3 or 4 days later. The formal orders of Government regarding the appointment of Mr. G. Ramanujiengar as Special Public Prosecutor may kindly be obtained early.

I have the honor to be,

Sir,

Your most obedient servant,

B.T. Kesavaiengar

District Magistrate,
Mysore District.

Appendix F. G.—1]

SUBJECT.....

.....

.....

Section. Law

File No. 29536

Serial No. 6

Diary No. of letter replied to.....

No. P 69/Sec 1

To

The D. S.

General and Revenue Secretariat.

( )

the *193*

Sir,

In Continuation

te of issue 3/7/35 of the G.O. no. P. 66-67 Law 205-36-4

ned by M.N.R. dt 3.7.35 according sanction to the

appointment of Mr. S. Ramanujaya

Addl Mgr a Special Pbr to Conduct

the Mandya Cement Case I

am directed to forward herewith

a copy of the Mysore D.C.'s letter

t of enclosures..... no. G. 2776/xe 35. dt 1.7.35 and

to request that necessary action

ied by

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

No. P 1717

Dated, Bangalore, 9th September 1935

To

From

The General *Secretary to the Government of His Highness the Maharaja of Mysore.*

To

The District Magistrate,
Mysore.

Sir,

With reference to your letter No.G3-235/35-36 dated 19th August 1935 reporting the progress made in the Mandya Cement Case on the file of the Assistant Sessions Judge, Mysore, I am directed to state that no report from you has been received till now regarding the disposal of the case. I am to request that a copy of judgment may kindly be obtained and sent for information of Government early.

I have the honour to be,

Sir,

Your most obedient servant,

for General Secretary to Government.

TSD

Appendix F G—1]

SUBJECT .....

.....

.....

Diary No. of letter replied to .....

General and Revenue Secretariat

( )

the *193*

Date of issue 10-9-35

Signed by M.V. N.R.J.

Section

File No.

Serial No.

No. P 1717

To The D. M. Mys.

Sir,

With reference to
letter no. G3-235/35-36 d 19.8.35
reporting the progress made in the
Mandya Cement Case in the file
of the Asst Sessions Judge Mysore,
I am directed to request that a c
of Judgment ~~recently delivered~~
may kindly be obtained and se
for information of Govt early.

I Lan
DME
S/S Jr Secr
TSI

State that
no report from
you has been
received till now
regarding the
disposal of the
case - Pl. call for

1912 P 8 35

No. G3. 235/35-36.
Encl.

OFFICE OF THE DISTRICT MAGISTRATE,
MYSORE DISTRICT,

Dated, Mysore 18th Septr. 1935.

From

B. T. Kesavaiengar, Esq., B.A.,
District Magistrate,
Mysore District, Mysore.

To

K. V. Anantaraman, Esq., B.A.,
Chief *Secretary to the Government of Mysore,*
Bangalore.

SIR,

In continuation of this Office No.G3.235/35-36 dated 12th September 1935 forwarding copy of judgment in the Mandya Cement case before the Assistant Sessions Judge, Mysore Division, I have the honour to state that out of a total of 17 charge sheets, of which 8 are against Krishna Rao, Singriengar and (3) Krishnasami, one against the first and second accused and five against the first accused only, three of them against all the three accused have been disposed of by the Assistant Sessions Judge. Accused 3 was discharged in these cases by the committal court, Accused 2 was acquitted by the Assistant Sessions Judge and Accused 1 was convicted and the sentences passed on him extremely lenient and wholly inadequate considering the grave nature of the offences under which he has been convicted. If the other pending charges against accused 2 & 3 have to be ~~pressed/against the accused~~ pressed it would be on evidence similar to that already adduced or let in before the Assistant Sessions Judge. The question of pressing the other charges against the first accused would involve unnecessary trouble and inconvenience to a large number of official and nonofficial witnesses and additional cost to Government and long delay in the disposal of these cases in the committal court and before the Sessions Court. In these circumstances the most convenient method of meeting the ends of justice and at the same time avoiding unnecessary delay and inconvenience and extra cost to Government seems to be to move the Hon'ble ~~the~~ High Court for enhancement of the sentence passed on the accused by the Assistant Sessions

Assistant Sessions Judge. As the accused has appealed to the Sessions Judge in the case, and the appeal case has been posted to the 21st instant, I am awaiting the result of the appeal and in case the appeal is not dismissed an a move is not made by the Sessions Judge for enhancement of the sentence to the Hon'ble High Court, further action will have to be taken under Section 438 Cr.P.C. for enhance ment of the sentence passed on the accused.

As regards the pending charge sheets against accused Singriengar, it is understood that the cases in which he has been acquitted were put up as test cases and all the available evidence against him was advanced The District Superintendent of Police (Range Cycle) in his report to the Inspector General of Police in this connection states that if the other pending cases have to be pressed it would be on evidence similar to that already let in or on the very evidence already adduced In these circumstances there seems to be no use in pressing the other pending charge sheets against this accused if it were merely to secure a conviction as against him.

I request that instructions in the matter may kindly be obtained from Government and intimated to me in time for taking further steps in this connection.

IN THE COURT OF THE ASSISTANT SESSIONS JUDGE, MYSORE.
Dated the 28th August 1935.

Present :- G. Paramasiviah Esquire B.A., LLB.,
Assistnat Sessions Judge.

Sessions Case No. 8/34-35.

Complainant:-

Government of Mysore

VS.

Accused:-

1. R. Krishna Rao
2. M. Singra Iynegar.

J U D G M E N T .

1. The facts leading to this prosection are as follwos:- The 1st accused R. Krishna Rao and the 2nd accused M. Singra Iyengar were the store keeper and Accountant respectively in the office of the Executive Engineer No. V Irwin Canal division, and Project division, Mandya. The Deputy Chief Engineer visited Mandya on 18-9-34, and handed over P.W. 42 Mr. C. T. Narasimha Iynegar, Executive Engineer, No. V Canal and Project division Mandya, which will hereafter be referred to No. V division, the anonymous petition Ex P 326 which had been addressed to the personal address of the Chief Engineer enclosed in the cover Ex P 326a, which bears the postal seal of the place of posting dated 10-9-34. It is alleged in Ex P 326 that on the night of 8-9-34 at about 8 P.M. 160 bags of cement had been removed in carts from the Engineer's officeto Mysore. P.W. 42 paid a surprise visit to the stores on the morning of 22-9-34 and on the same day he received by post another anonymous petition Ex P 325 dated 21-9-34 and addressed to him personally as seen from the cover Ex P 325a in which the above petition had been enclosed. On the morning of 22-9-34, P.W. 42 as a result of the counting he made, found 398 bags at the stores and recorded the same in Ex P 274a. There was a shortage of 220 bags, and on further enquiry he learnt that some bags had been carted away from the stores. On the evening on 22-9-34, P.W. 36 B. G. Rajiengar, the stores accounts clerk brought Rs 200/-

Rs 200/- from the 1st accused, and P.W. 42 got the amount credited to the treasury and granted the receipt Ex P 276 to the 1st accused for the said amount on 22-9-34. P.W. 42 got the stores sealed after counting, and got it opened at 11 A.M. on 23-9-34 instructed the 2nd accused to search for all the vouchers in the store keeper's room and to find out the exact shortage after posting the A Form register in which the entries are made after the montly returns relating to stock are submitted to the Comptroller after beeng compiled out of the entries in the register of daily receipts and issues maintained by the store keeper. On the evening of 23-9-34 the 2nd accused gave out that there was total shortage of 1335 bags. The A Form register had bot been posted for the months of July, August, and September 1934. P.W. 42 then sent the writtem complaint Ex P 321 to P.W. 40 Mr. H. M. Murull the Police Inspector at Mandya, who took up the investigation of the case after submitting the F.I.R. under section 409 I.P.C arresting the 1st accused the same day. The 2nd accused was arrested on 11-10-34. After completing the investigation, he placed a Charge sheet before the Special First Class Magistrate Mandya on 23-10-34 against the present accused and on G. R. Krishnaswamy, Typist for alleged offences under section 409, 467, 477A and 109 I.P.C. The Learned Magistrate after enquiry which took up more than 60 sittings, passed on order on 26-3-35 dicharging the accused Krishnaswamy and committing the present two accused to be tried before the court of Session Mysore division for offences under section 467, 409 and 477A, as regards the 1st accused and for the offence of abetment as regards the 2nd accused under sections 109 and 409 I.P.C. The case was received by transfer in this court on 25-5-35, and in this court also the trial has gone on to the weary length of 26 full working days. Most of the time was occupied in recording evidence let in by the prosecution with regard to a number of alleged acts of misappropriation before and sub-

subsequent to the periods during which the particular acts of misappropriation with which the accused stand charged at present, are stated to have been committed. I am constrained to observe that if the prosecution had let in evidence by examining the witnesses in the order of sequence of event, I would have been able to give much earlier ruling which I gave on 6-8-35 to the effect that evidence of similar acts was irrelavent in as-much-as the question of intention or knowledge of the accused and the defence of accident or mistake or other innocent condition of mind, did not arise in the peculiar circumstances of this case.

2. The learned committing Magistrate framed 3 charges against the 1st accused, and they are:-

(1) That he forged the document marked Ex P 164a there, and marked here as Ex P 140a, which purports to give authority to Messrs B. V. Narayanaswamy & Co., Bangalore, to deliver cement bags and thereby committed an offence under section 467 I.P.C.

(2) That he on or about the 28th January 1934, in his capacity as a Public servant, committed criminal breach of trust under section 409 I.P.C. in respect of 200 bags of cement received from the above firm.

(3) That he committed an offence under section 477A on or about the 11th December 1933, as store keeper, by making false entries marked there as Ex P 55d, P 51f and P 57k, and here as Exs P 139d, P 269d, and P 270b respectively.

The 2nd accused was charged of having committed on or about the 31st December 1933 an offence uder sections 109 and 409 I.P.C. by abetting the 1st accused in committing of breach of trust in respect of 200 bags of cement received by the 1st on 28-1-34 from Messrs B.V. Narayansamy & Co., Bangalore.

Before the

Before the trial began in this court and at the instance of the learned Public Prosecutor 2 more charges were framed against the 1st accused and they are :-

2A. That he on or about ~~on 19~~ 19-2-34, committed criminal breach of trust in respect of 200 bags cement, an offence punishable under section 409 I.P.C.

2b. That he on or about 6-6-34 committed ~~100 bags of~~ criminal breach of trust in respect of 100 bags of cement, an offence punishable under section 409 I.P.C.

The charges against the 2nd accused was modified as follows:-

That he between 28-3-33 and 28-1-34, abetted the 1st accused im committing breach of trust in respect of 200 bags of cement. Two more additional charges were also framed against the 2nd accused i.e. :-

(2) That he between 28-3-34 and 19-2-34 and thereabouts abetted the commission of the offence of criminal breach of trust by the 1st accused in respect of 200 bags of cement, and thereby committed an offence under section 109 and 409 I.P.C.

(3) That he between 28-3-33 and 6th June 1934 or thereabouts abetted the commission of the offence of criminal breach of trust by the 1st accused in respect of 100 bags of cement and thereby committed an offence under sections 109 and 409 I.P.C.

3. At first I propose to deal with the three counts of criminal brach of trust regarding which the 1st accused stands charged under section 409 I.P.C as the decision to be given with regard to other charges against him and the 2nd accused more or less depend upon the conclusions to be arrived at in regard to the former. Before the case was being summed up by the learned special Public Prosecutor, he was requested to confine

confine himself to only that much of evidence which was relavent to facts which formed the subject matter of the specific charges framed in the case, leaving out the rest of the evidence that related to similar acts of misappropriation prior and subsequent to the above acts. The Assessors were also requested to apply their mind only to such of the evidence that had an immediate bearing on the specific charges in question. P.W. 40 who investigated the case admits in the courseof his examination that he has presented separate charge sheets with regard to all the prior and subsequent acts of misappropriation and that the above cases are still pending. In the circumstances, I refrain fron from dealing with evidence that has been let in with regard to the said acts, as otherwise the parties concerned will be embarassed in handling the above cases. Now coming to the facts of the present case, Ex P 237 dated 21-7-34 puports to be an order for 400 bags of cement placed with Messrs B. V. Narayanswamy & Co., Bangalore, by P.W. 41 Mr. N. Subba Rao, the then Executive Engineer, No. V Division. But P.W. 41 says that the portion in Ex P 237 ordering for 400 bags of cement is a subsequent insertion made after obtaining his signature to a letter requiring the firm to send the railway general receipt for prepayment of freight. In response to the above order the firm despatched 400 bags of cement in two consignments of 200 bags each, and sent two bills for 687/8/- each through the Bank of Mysore Ltd., for the value of the said bags being realised . Exs P 238 and P 239 are stated by P.W. 35 K.R. Srinivasan son of one K. Ramiah the managing partner of the firm, as being the Triplicates of the bills dated 26-7-33 and 31-7-33 respectively and sent to the Bank of Mysore Ltd., in duplicate for being realised from the drawer the Executive Engineer, No V division. P.W. 30 N.S. Gopaliah clerk, Bank of Mysore Ltd., deposes that as soon as the said bills were received at the Bank, they were sent by Post to the Drawer

drawer/for collection, that Ex P 165 dated 4-12-33 is a receipt granted by the Bank of Mysore Ltd., to the Executive Engineer No. V division, for Rs 1376/- in payment of the said 2 bills, that Ex P 166 isthe credit voucher for having received the amount, that one offical from the Executive Engineer's office, Mandya, paid the amount by signing on the reverse of Ex P 166, Ex P 166a being his signature, and representing that he was making payment under the instructions of the Executive Engineer, that as per entries Exs P 164b and P 164c in the bill collection register maintained at the Bank the amount was credited to the accounts of the firm on 4-12-33. P.W. 41 the Executive Engineer says that he never made the above payment, and that he never authorised the 1st accused, by whom the above payment purports to have been made, to make any such payment. On the plea of sending the communication Ex P 201 dated 11-12-33 to the Bank of Mysore Ltd., acknowledging receipt of Ex P 165, and of sending a copy thereof to the firm for information, the signature of P.W. 41 Mr. N. Subba Rao, Executive Engineer was obtained to Exs P 201 and Ex P 140, and after they were signed, the portion Ex P 140a purporting to be an order for sixty tons of cement was inserted on the back of Ex P 140a despatched to the firm, in the space available between the last line and the signature of P.W 41. Ex P 141 is the copy of Ex P 140 retained at the office and the portion EX P 141a is in the handwriting of the 1st accused. Exs P 225 dated 20-12-33 is a letter by the firm acknowledging receipt of Ex P 140 and enclosing railway receipt Ex P 110 for 440 bags of cement together with currency notes and postal stamps of the value of Rs 458/10/- being the railway freight payable on the above consginment. The 1st accused took delivery of the said bags on 24-12-33 as per entry Ex P 111a signed by him in the goods Inwards and delivery book from P.W. 21 Mr. M. Ramachandriah the then Station Master at Mandya. The firm sent another consignment of 200 bags of cement per railway receipt

receipt Ex P 112 dated 27-1-34 which arrived at Mandya on 28-1-34 by waggon N . 712. The railway receipt was endorsed by P.W . 33 A. Subba Rao, Accounts clerk then, in favour of the 1st accused, who made the endorsement Ex P 112a dated 29-1-34 himself. Though the said endorsement is dated 29-1-34 and though P.W 33 deposes that Ex P 112awas received at the Executive Engineer's office on 29-1-34, P.W. 21 the Station Master deposes that the bags arrived at Mandya on 28-1-34 by waggon No. 712, that the 1st accused took delivery of the bags on 28-1-34 as per entry Ex P 113a signed by the 1st accused, that the 1st accused got them booked to "Self" for Mysore as per railway receipt Ex P 4 dated 28-1-34, that the bags were despatched to Mysore by the same waggon, and that Ex P 114 and P 115 are the forwarding and risk note relating to Ex P 4 and they are filled up and signed by the 1st accused. The R.. Ex P 4 dated 28-1-34 was sent to P.W. 1 Hakeem Mad. Ghouse who was purchasing cement from the 1st accused, and the former endorsed the receipt as per Ex P 4a to P.W 8 Ibrahim sab, cartman, who took delivery of the bags of at the Mysore Railway station from P.W 20 M.Sambasiviah, the Goods Clerk, as per entry Ex P 54 a, and carted them to the shop of P.W.1. This witness says that he purchased these bags from the accused at Rs 58/- a ton. Ex P 5 is a postcard dated 30-1-34 written by the 1st accused to P.W. 1 referring to Ex P 4 and the consignment thereunder. Exs P 306 and P 307 are the vouchers purporting to have been given by the 1st accused for having paid Rs 2/8/- and Rs 7/8/- respectively towards unloading the said bags at the railway station and carting them from the railway station to the stores of the Office Executive Engineer, of No V divison at Mandya though the bags had been booked by him direct to Mysore. Ex P 27 dated 27-1-34 is a bill for Rs 730/- sent by the firm to the Executive Engineer, No. V Division, through the Bank of Mysore Ltd., for the recovery of the value of 200 bags of Charminar cement despatched from Bangalore to Mandya asper R.R. Ex P 112.

P 112. P.W. 30 N. S. Gopaliah, the clerk of the Bank of Mysore, deposes with reference to the bill collection register Ex P 164 maintained by the Bank that the amount due under the bill Ex P 22/was fully realised and credited to the account of the firm on 30-4-34. Ex P 116 dated 13-2-34 is a Railway receipt for 200 bags of cement despatched from Bangalore by the firm to the Executive Engineer No. V Division Mandya, by waggon No. 686. The 1st accused took delivery of the said bags from P.W. 21 the Satation Master at Mandya as evidenced by the entry Ex P 113b which is signed by him. As per R Receipt Ex P 6 dated 19-2-34, the said bags are got booked to self by the 1st accused for Mysore and were despatched to Mysore by the same waggon. The 1st accused sent Ex P 6 having endorsed it in favour of the bearer to P.W.1, who endorsed it in turn in favour P.W. 8 cartman Ibrahimsab as per Ex P 6a. P.W. 8 took delivery of the bags at the Mysore Railway station from P.W . 20 as per entry Ex P 55a and carted them to the shop of P.W 1. Ex P 7 dated 20-2-34 is the delivery note relating to this consignment granted by the Cash delivery clerk of the Mysore Railways, Mysore. Ex P 8 dated 22-2-34 is a receipt for 502/- granted to P.W 1 by the 1st accused. Ex P 308 and Ex P 309 are the vouchers given by the 1st accused for having paid Rs 2/8/- and Rs 7/8/- for unloading and carting charges respectively with regard to these 200 bags. Ex P 228 dated 13-2-34 is a bill for Rs 730/- sent by the firm through the Bank of Mysore to the Executive Engineer No. V. Division Mandya for the recovery of the value of the above 200 bags. P.W. 30 says that the amount was fully realised and credited to the firm's accounts on 30-4-34. As per Ex P 258 dated 26-5-34 an order for 2 waggons of cement was placed with the firm by P.W 2 Mr. C. T. Narasimha Iyengar the then Ex Engineer No. V Division Mandya, Ex P 259 dated 4-6-34 isthe communication sent by the firm enclosing .R. Ex P 142 dated 31-5-34

31-5-34 for 460 bags of cement sent from Shabad to the address of the firm. The latter have endorsed the said receipt in favour of the Executive Engineer, Mandya. The said consignment was received at Mandya on 5-6-34, and the 1st accused took delivery of them at Mandya on 6-6- 34 as per entry Ex P 111d, which he has signed from P.W. 23 Mr. M.N. Srinivasa Rao, the then Station Master at Mandya. The consignment was received at Mandya in two waggons Nos. 4372 and 12376, containing 230 bags each. Out of 460 bags, 360 were reomved at Mandya Railway station and 100 bags which were left in waggon No. 12376 were got booked to self by the 1st accused for Mysore as per R.R. Ex P 13 dated 6-6-34. Exs P 143 and P 144 are the forwarding and risk notes relating to R.R. Ex P 13 and they were filled up by the 1st accused in the presence of P.W 23. The R.R. Ex P 13 was sent by post to P.W. 1, and Ex 15 dated 7-6-34 is the letter with which Ex P 13 was sent both being enclosed in the cover Ex P 16. Ex P 14 dated 9-6-34 is a receipt granted by the 1st accused to P.W. 1 for Rs 280/- . Ex P 208 dated 5-6-34 is the bill sent by the firm through the Bank of Mysore Ltd., to the Executive Engineer, No V division Mandya for Rs 1523/-12/- being the value of 460 bags of cement referred to above. P.W. 30 says that the amount was realised and credited to the accounts of the firm on - 28-6-34. Exs P 314 and P 315 are the vouchers given by the 1st accused as regards 2/8/- and 17/4- being the unloading and carting charges of the above 460 bags. From the above evidence it is clearly seen that the 1st accused got booked to Mysore from Mandya 200 bags of cement on 28-1-34, 200 bags more on 19-2-34, and another 100 bags on 6-6-34 for being sold by him to P.W. 1, a Hardware merchant at Mysore, that the Controller to the Government of Mysore, paid to the firm the value thereof, that the 1st accused committed criminal breach of trust by misappropriating the above 500 bags of cement for his own use and benefit, when the Executive Engineer No V

Engineer No. V. Division, of which the 1st accused was the store keeperwas authorised as such to receive the bags for and on behalf of the Executive Engineer, No V Division, Mandya. The 1st accused in the course of his examination by the committing Magistrate, stated he had nothing to say in the matter and his statement there is marked as Ex P 329. He made a very lengthy statement here, and as regards the charges of criminal breach of trust he says that indent No. 1039 dated 11-12-33 and marked as Ex P 140 was placed by P.W 41Mr. N. Subba Rao Executive Engineer that he did not get the bags in question booked to Mysore. He does not choose to specifically deny his writing and signature in the concerned railway receipts and the forwarding and risk notes. Neither does he say anything as regards the alleged sale of the bags of ce nt in question to P.W. 1, from whom he has received payments towards the value of the bags of cement supplied to him. It is impossible for him to meet the overwhelming documetary evidence that has been let in by the prosecution, and which goes to prove beyond doubt that he got booked to Mysore the cement bags in question and sold them to P.W. 1. His contention that Ex P 140 was not a bogus but a genuine order placed by P.W. 41 is of no avail to him. Because as already stated, the bags had been sent by the firm to the xecutiveEngineer, No V division, Mandya, and as is evident from the bills Exs P 208, P 227 and P 228 which have all been paid by the Comptroller to Government of Mysore, they had becomethe property of Govt. The case was tried with the aid of five Assessors, and Mr. V.L. Dharanam one of them could not be present from 23-7-35 onwards on account of illness. Of the remaining four Assessors who were present throughout the trial Mr. M. Anantha Krishna Iyengar is of opinion that the first accused is guilty of under section 409 I.P.C. with regard to the charges 2 and 2B, and that benefit of the doubt may be given to him as regards charge 2A. Mr. Narasinga Rao Scindia says that the first accused is

is guilty under section under section 409 I.P.C. with regard to ~~the~~ charges A 2A and 2B and gives him benefit of the doubt as regards 2. Mr. N. Doreswamy Mudaliar is also of the same opinion as Mr. Narasinga Rao Scindhia. Mr. P.N. Sangappa is of opinion that the first accused is guilty of all the three counts. By fully agreeing with the opinion of this Assessor and partly agreeing and partly disagreeing with the opinion of ~~this~~ the remaining Assessor, I find the 1st accused guilty of all three charges i.e. 2, 2A and 2B.

IV. Now coming to charge No.1 against the 1st accused of having committed forgery under section 467 I.P.C. with regard to the document marked as Ex P 16~~9~~4a in the committing Magistrate's court and as Ex P 140a here, there is absolutely no evidence to show that it was he who made that document though thereis ample material to hold that it must have been made at his instance. The contention of the first accused that it is a genuine order cannot be accepted even for a moment. There is the evidence of P.Ws. 41 and 42 who were the two Executive Engineer in charge of No. V division, Mandya that ~~the~~ before placing order to fresh supplies the requirement for cement was being ascertained from the Sub divisional officers concerned, that the amount of stock at the stores was being ascertained from the store keeper ~~and that the quantity was being ascertained from the store keeper~~, and that the ~~it~~ quantity to be ordered was being decided after getting the above information. As a matter of fact there is evidence to show that such a procedure was followed with regard to Ex P 258 dated 26-5-34, which was an order placed with the firm for 2 waggons of cement. Ex P 148 dated 11-4-34 is the memo by P.W. 42 the then Executive Engineer asking P.W.24 Mr. M. C. Sampath Iyengar Assistant Engineer No II Sub division Mandya, to state the requirement of cement for the three months

months to end of June 1934. P.W. 24 has stated in reply Ex P 148a dated 12-4-34 that 36 toms of cement was required. In that connection the first accused as store keeper has submitted the memo Ex P 149 dated 25-4-34 stating that the requirements of cement bags for Nos. I and II divisions worked up to 36tons and that out of 440 bags received on 9-5-34 only about 50 bags was in stock, and that order may be placed for two waggons, one waggon to be supplied by the end of May and another by the 12th June 1934. P.W. 24 submitted the memo Ex P 149a dated 25-4-34 approving of the suggestion of the store keeper the first accused and that the second accused as Accountant submitted the memo Ex P 149b dated 25-5-34 requesting orders to be placed. Accordingly the order ExP 258 dated 26-5-34 was placed by P.W. 42. None of the above appears to have been done with regard to Ex P 140 which purports to be a copy of Ex P 201, which is a mere letter acknowledging receipt of Ex P 165. Ex P 139 is the To register that was being maintained by P.W. 22 N. Krishnmachar a clerk in the current branch of the Executive Engineer's office, No. V Division Mandya and the entry Ex P 139d therein purports to be the To number relating to the order Ex P 140 sent to the firm. P.W. 22 deposes that he made the entries Ex P 139a to Ex P 139g, except the entries Exs P 139d and P 139c, that the letter "a" by the side of the figure 1038 in Ex P 139e was not put by him that likewise the letter "a" by the side of figure 1039 in Ex P 139f was not put by him, that the entire entries Exs P 139c and P 139d are in the writing of the first accused that the said entries are not to be found when he made the entries Exs P 139e and P 139f, that he did not enter the figures 1038 and 1039 in Ex P 140, and the figure 1038 and 1039 in Ex P 141 and that the said figures are in the writing of the first accused. By a mere glance at the entries Exs P 139c and P 139d it can be made out that they are subsequent interpolations made by the first accused himself, who did not

not want P.W. 22 or any other clerk in the office to know the contents of Ex P 140a the letter sent to the firm and of Ex P 141a, a copy thereof maintained at the office. The whole of Ex P 140 is typed, and P.W. 38 R.A. Krishna Iyengar, Head clerk No. V Division says that Ex P 140 is initialled by him on the back and that when he initialled it the portion Ex P 140a was not to be found. It has thus been satisfactorily proved that Ex P 140a is a bogus indent interpolated after Ex P 140 was signed by P.W. 41 M. N. Subba Rao Executive Engineer. As already stated ther is absolutely no evidence to show that the said document was typed by the first accused, though it can be safely stated that he was instrumental in getting up that document typed. P.W. 22 N. Krishnamachar, clerk in the current branch and P.W. 38 R.A. Krishna Iyengar Head clerk of the office of the Executive Engineer No V Division say that the first accd. did not know typing at all. For the foregoing reasons agreeing with the unanimous opinion of the Assessors, I hold that the first accused is not guilty under section 467 I..C. Though the facts warrant a conviction of the first accused for the abetment of the offence of foregery with regard to Ex P 140 in view of the conflict of decisions as towhether a conviction for abetment ~~of~~ is permissable when charged only for the substantive offence without a specific charge as regards abetment, and in view of the fact that the Assessors had no opportunity to give their opinion as regards the offence of abetment, do not propose to convict the first accused for abetment of the office in question.

One more charge that remains to be considered with regard to the first accused is that he committed an offence under sec. 177A I.P.C. by wilfully and with intent to defraud ~~him~~ making false entries marked as Exs P 55d, P 51f and P 57k in the committing Magistrate's court, and a Exs P 139d, P 269d and P 270b respectively here. Ex P 139d is an entry in To register Ex P 139, proved to have been made by the first accused, who ad-

who admits of having made some entries in the said register, though not of his own accord but at the instance of the Head clerk in the office. This entry relates to Ex P 140, which is already held to be a bogus indent placed with the firm of Messrs B.V. Narayanswamy & Co., Bangalore, for 60 tons of cement, and was made to show that such an order was placed by the then Executive Engineer, though it was not actually so. Ex P 269d is an entry in Ex P 269 the Account of daily receipt of stock and stores for the month of Feb. 1934 relating to No. V Division, Mandya and according to it 10 tons of 200 bags of cement is mentioned as having been received at the stores from B.V.N. Swamy & Co.,, on 28-1-34, though the said consignment was taken delivery of and got book direct to Mysore by the first accused under the R.R. Ex P 4 dated 28-1-34, instead of being taken to the stores. The intention with which this entry was made is quite obvious, and that it was made for the purpose of rendering false account is also quite clear. The entry Ex P 270b in the measurement book Ex P 270 which was admittedly being maintained by the first accused relates to Ex P 277 which is a bill of Messrs B.V.N.Swamy & Co., for Rs 730/- being the value of the above consignment. The first accused says that he was making entries in Ex P 270 measurement book after the receipt of Bills concerned. There is the evidence of P.W. 33, P. . 34, P.W. 36, P.W.37 and P.W. 39 that the bills will be received at the Audit branch of the office concerned after the store keeper makes the stock certificates thereon, and after the said certificates are initialled by the Executive Engineer, who does it after verifying the entries in the measurement book. They also state that at the time of auditing and passing Bills for payment the corresponding entries in the daily receipts register and measurement book must be verified in order to find out whether the articles concerned were actually supplied and received at the

the stores. The entry in question in the measurement book was made by the first accused with a view to get payment made by Government with regard to the value of articles ~~xixwhich~~ he himself had misapprpriated. The prosecution have ~~xxx~~ thus succeeded in establishing all the elements constituting an offence under section 477A, with regard to the three entries referred to in the third charge against the first accused. They are all proved to be false entries made by him with intent to deraud Government. I therefore, find him guilty under section 477A agreeing with the unanimous opinion of the Assessors.

V. The indictment against the second accused is that he being the Manager and Accountant of the Office of the Executive Engineer No. V Division, Mandya, abetted the commission of the offence of criminal breach of trust by a public servant the ~~xix~~ 1st accused in respect of all the three counts regarding which the first accused in charged. From the evidence that has been let in for substantiating the charge against the accused, it is sought to be made out that the second accused being the Head ~~xixxx~~ not only of the accounts section of the office, but also of the whole Ministerial staff, conspired with the 1st accused offering him facilities to comit the acts of criminal ~~xxxxxxxxxxxxxx~~ misappropriation by not exercising proper scrutiny and checking as regards the compiling of various ~~xxc~~ accounts and periodicals returns from 28-3-33 onwards up to 28-1-34, 19-2-34 and 6-6-34 on which dates the alleged acts of criminal breach of trust have taken place, and even subsequently with a view to help the first accused to conceal the acts of embezzelment. As I have already stated at the beginning I do not propose to deal with the massof evidence that has been let in with regard to the compilation of stock accounts and the returns thereof as it all relates to similar act of embezzlement by the same accused against whom separate cases are still

still pending before the Special Ist Class Magistrate, Mandya. o doubt considerable trouble has been taken by the prosecution to point out inaccuracies as regards the Half yearly and other Returns of stock that were being submitted to the Comptroller, but any refernce or comment on that evidence at this stage is sure to be a source of embarrassment to the Parties concerned in the conduct of those cases. Moreover in view of the modus operandi adopted in the commission of the specific acts of embezzlement with which we are concerned at present i.e. the booking of the cement bags ~~of cement~~ direct from the Railway station without their being brought to the stores, when only the accounts relating to the quantity of stock at the stores will be of material importance, the evidence relating to the accounts of the stores has nodirect bearing on the facts of the present case. Likewise such of the evidence that points to the fact that the second accused had had oportunity of seeing at the office copy Lx P 141 of the bogus indent Ex P 140 at the time of receiving the concerned bills Exs P 227 and P 228, and that he failed to take due notice of the same. The said bills are received on 10-3-34 and the consignments of cement bags to which the above bills relate were misappropriated on 26-1-34 and 19-2-34 respectively. Therefore, even if it is true that the second accused had occasion to look at Ex P 141 on 10-3-34, he cannot be held ~~to~~ to have abetted the offences under section 409 I.P.C. as held in 61 I.C. 836, A.I.R. 1928 Lahore 382 and 2 Mys.L.J. 275 though he might be held liable under some other sections. Now, coming to the evidence which has got a direct bearing as regards the charge against the 2nd accused, it may at once be stated that there is nothing to show that he had any hand in the making of the false indent Ex P 140. Neither this document nor the copy Ex P 141 retained at the office bears the intialls of the second accused, and the argument that was urged on behalf of the prosecution that the 2nd accused purposely of designedly refrained from putting him initials to them, may as well

designedly refrained fromputting his initials to them, may as well be used of by the defence by stating that the person or persons who are responsible for making that document might have purposely or designedly so managed as to bring it to the notice of the 2nd accused. There is ample testimony of the prosecution witnesses themselves to establish that there was no need nor occasion for the accounts clerks and the accountant to refer to the office copy of indents at any time while auditing and passing bills for payment. P. 33 A. Subba Rao who is now the Cashier in No V Division, Mandya, and who was the Accounts clerk from 1.1.32 till 31-12-33 in that division, says that as far as he is aware of them there was no rule in P.W. Accounts code, nor any departmental instructions prior to February1935, that the office copy of the order relating to goods should be looked into before passing bills, that it was not usual to refer to A Form register, Half yearly Accounts. Half yearly counting certificates, as there was no rule to that effect, that it was not the duty either of the accountant or of the accounts clerk to verify the actual stock in existance at the stores, that before passing bills they had to satisfy as to whether there was thestock certificate, whether the entry had been made in the daily receipt register, (whether there was the stock certificate, ~~whether the~~ entry had been made in the daily receipt register,) whether the quantity in in has been ~~made in the daily receipt register~~, mentioned in the measurement book, and whether such entry initialled for having been checked by the Executive Authoritiesconcerned, that they have also to satisfy themselves whether the rate mentioned in the bill tallies with the sanctioned rate and that their responsibility ceases if the above conditions are fulfilled. P... 34 C. Srinivasa Murthy, who was also an accounts clerk in the division, deposes that he was preparing the Half yearly counting certificates of stock for being submitted tothe Comptroller, that he was not looking to the indents at the time of preparing such

such certificates , as there was no rule to that effect, that it was the store keeper who has to render accounts as regards the number of articles at the stores per "A Form" balances maintained by the accounts branch, that such balances ore arrived at with referenceto the daily receipts and issues of stock , and that the office copies of indents are not being filed in the accounts branch. P.W. 36 B.G. Rajiengar who was a stores accounts clerk in the division from 8-2-34 till - 13-12-34, corroborates what the previous witnesses have stated, and further deposes that it was he who audited the bills Ex P 208, P 227 and 228 - these are the bills relating to the bags of cement which are misappropriated that the above bills are entered in the measurement book Ex P 217 and the said entries are ~~a~~tialled by the Exewutive Engineer, that all the articles referred to therein find a place in the daily receipt register, that the entries in the said registers are made by the store keeper, and that as there was no regular file maintained as regards indents, and as the ~~xii~~ filling up of the columns relating the number of indents was not being strictly enforced in in the case of daily issues, he did not insist upon the column being filled up by the 1st accused. P.W. 37 Mr. S. Govinda Rao Superintendent Comptroller's office, who conducted special audting in connection with this case, deposes that the store accounts clerk must also look at the indents while compiling monthly accounts - P. . 36 who was the stores accounts clerk in the division says that this is not incumbent, that it is the Executive Engineer who has to scrutinize the requirements of the sub divisions before placing orders with firms for supply of articles, hat the accountant is not expected to do that, that no register showing the daily balances of receipts and issues is required to be maintained in the divisional office, that the primary responsibility of auditing the bills rests with the accounts clerk, that it is not necessary for the accountant to do once again the work of the accounts clerk, that ~~a~~ fair copies

copies of office drafts - do not pass through the accountant either before or after they are signed by the Executive Engineer, as they go direct to the Head clerk, and that the vouchers and copies of orders will be with the store keeper. The statement of the 2nd accused both in the committing Magistrate's court and in this court is more or less the same as deposed to by the above witnesses. Mr. V.T. Srinivasan, who was the Assistant Comptroller in the Comptroller's office at the time says that the bills before pax being passed for payment, the concerned indents must be looked into by the accounts staffof the division, consisting of the divisional accountant and the accounts clerks. But the practice in the divisional concerned has deposed to by the accounts clerks who have acutally worked there is to the contrary. This witness further says that the Executive Engineer is the officer who is responsible for the physical quantity of all the articles received at the divisional stores, and that the signature or initials of th Executive Engineer to the stock certificate in the bills signifies that the articles referred to in the bills have been received in the stores. P.W. 41 Mr. N. Subba Rao the Executive Engineer, deposes that if the stock certificate is initialled by the accountant, it indicates that he referred to the corresponding entries in the measurement book and the daily receipt register, and that it is not the duty of the accountant to verify the physical quantity of the articles at the stores. P.W. 42 Mr. C. T. Narasimha Iyengar, who succeeded P.W. 41 says that he is of opinion relying on para 171 of P.W. Accounts code that the Executive Engineer should visit the store with the measurement book to verify the physical quantity of the articles in the stores, when the store keeper makes entries in the measurement book immediately after the articles are received at the stores, and submits the measurement book to the Execu-

Executive Engineer for the entries being intialled and that as the measurement book was not submitted to him before 19-6-34 he had no chance of checking the articles referred to in the bill Ex P 208 and received on 6-6-34. As per para 246, Mysore Public Works Accounts code, it is the duty of the store keeper to look to the proper custody, preservation and issue of the stores under his charge and to the keeping of the requireXXXX Returns relating to them. In para 662 it is laid down that the divisional accountant shall be treated as the Head of the Executive Engineer's Office Establishment, and his duties as such are defined as follows in para 664:-

(1) As Accountant i.e. asthe Compiler of the accounts of the divisionXX in accordance with the prescribed rulesand from the data furnished to him ;

(2) As primary Auditor, XXXX i.e. as the Representative of the Audit department, charged with the responsibility of applying certain preliminary checks to initial accounts, vouchers, etc.

(3) As Financial Assistant i.e as a General Assistant and Advisor to the divisional officer in all matters relating to the accounts and Budget estimates, or to the operation of ~~all~~ financial rules generally. It is further laid down in the same para that in the discharge of these duties he is expected to keep himself fully conversant with all sanctions and orders passing through the Office and with other proceedings of the divisional officer and his subordinates which may affect the estimates or accounts of actual or anticipated receipts and charges.

As I have already stated there is nothing to show that the bogus indent Ex P 140 ever passed through him, and he had that he ever had any opportunity to look at it. Even if he had an

an opportunity to look at it, there was nothing to suspect that it was not a genuine order in as much as it is admitted that it bears the signature of P.W. 41 Mr. N. Subba Rao, Executive Engineer. Neither have the Exxxxxxx Prosecution succeeded in proving that it was part of his duty to see that actual quantity of the articles received at the stores. There is on the other hand the testimony of a number of witnesses who are competent to speak on the point to the effect that it was not his duty to look to the physical quantity of articles in the stores. P.W. 36 who audited the bills in question says that the corresponding entries in the measurement book and the Daily receipt book were correct and that there was nothing more to be looked into before passing the Bill, as the requisite stock certificate had been furnished by the store keeper the 1st accused and had been initialled by the Executive Engineer. In the circumstances, I cannot but agree with unanimous opinion of the Assessors that the second accused is not guilty of the offence with which he stands charged.

In conclusion, I find the first accused not guilty under section 467 I.P.C. and acquit him under section 303(2) Cr.P.C. of that charge. I find him guilty under section 409 I.P.C. on all the three counts with which he stands charged, and also under section 477A I.P.C. The 2nd accused is not found guilty under sections 109 and 409 I.P.C. and he is accordingly acquitted under section 309(2) Cr. P. C. of that charge. Now coming to the sentence to be passed on the first accused, it must be borne in mind that duties of Public Servants as the 1st accused involving great powers of control over the property entrusted to them are of a highly trustworthy and confidential character and a breach of trust by such persons must be taken serious notice of The 1st accused in this case started xx in service as a Mutchi on a pay of 12/- a month, and having earned the good will and confidence of his Superior Officers

Officers rose to the responsible position of a store keeper on a pay of ℔ 50/- a month. It is a pity that he ~~would~~ should have deviated from the right path of duty at the fag end of his official line and resorted to defraud Government. Taking all the circumstances of this case into consideration I sentence him to one year's rigorous Imprisonment and to fine of 500/- ~~each~~ (five hundred) under section 409 I.P.C. on each of the three counts. In default of payment of fine he has to undergo further imprisonment of the same kind for six months more. I also sentence him to rigorous Imprisonment under section 477A I.P.C. for one year and fine of ℔ 250/- (Two hundred and fifty) and in default to three months' imprisonment of similar kind. All these sentences will run concurrently in view of his advanced age and in view of his being in custody for nearly a year. The second accused who is not found guilty of the charge brought against him, is hereby acquitted under section 309 Cr.P.C.

(2)

VII . All the four Assessors who aided in the trial of this case are stated to be businessmen, and all of them evinced keen interest throughout. In view of the large number of days occupied in the trial of the case, a recommendation will be made through the Sessions Judge, Mysore Division, to the District Magistrate, Mysore that they may be exempted for a period of two years from serving either as Assessors or Jurors.

Pronounced in open Court,

Sd. C. Paramasiviah,

Assistant Sessions Judge,

28-8-35.

Copy applied for on 28/8/35
Copy ready on 3.9.35
Copy delivered to Mr. B.K. Bangar 3.9.35
B. Paramasiviah
SUB

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat.

No. P 3855 Dated, Bangalore, 6th November 1935.

From

The *General Secretary to the Government of His Highness the Maharaja of Mysore.*

To

The District Magistrate,

Mysore.

Sir,

With reference to your letter No.G3-235/35-36 dated 18-9-1935 soliciting sanction of Government to move the High Court for enhancement of sentence in the Mandya ~~Sa~~ Cement case, I am directed to enquire whether the Sessions Judge, Mysore, has passed orders on the appeal filed by the accused Krishna Rao and if so what orders have been passed thereon.

I have the honour to be,
Sir,
Your most obedient servant,

For General Secretary to Government.

TSS.

Appendix F G—1]

SUBJECT.....

.....

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Section Law.

File No. 205-34

Serial No.

Diary No. of letter replied to.....

No. P-3055

To Hs D. M. Mysore

Sir

General and Revenue Secretariat

( )

the *193*

With reference to Your letter no. 93-135/35-36 dated 9-35 soliciting sanction of Govt to move the H.C. for enhancement of sentence in the Mandya Cement Case I am directed to enquire whether the Learned Judge Mysore has passed orders on the appeal filed by the accused Krishnaraos and if so what orders have been passed thereon.

Date of issue 7/11/35

Signed by

List of enclosures.....

Copied by MVB/11

I have the honour to be Sir Your obedient servant

Examined by.....

Secy to Govt

WD 03601—GPB—30,000—23-9-35

30530 35
P
55

POLICE DEPARTMENT.

Tel. Address
"POLICE"
PHONE No. 298

OFFICE OF THE
INSPECTOR-GENERAL OF POLICE IN MYSORE,

When replying please quote
No. C2-275/34-35.

Dated Bangalore, ...16th November.....*1935* .

FROM

F. A. HAMILTON, ESQ., C.I.E.,
Inspector-General of Police in Mysore,
Bangalore.

CHIEF SECRETARY. Law 18 NOV. 1935

DEPUTY SECRETARY TO GOVT. OF MYSORE 19 NOV. 1935 No. 3286

A.V. Ramanathan, Esq., B.A.,
Chief Secretary to the Government of
His Highness the Maharaja of Mysore,
Bangalore.

SIR,

In continuation of this Office No.C2-275/34-35 dated 10th - September 1935 in regard to the case of misappropriation of cement in the Ex-Engineer's Office, Mandya, I have the honour to state that it is reported by the Superintendent of Police, French Rocks, that the appeal preferred by the accused R. Krishna Rao to the Sessions Judge, Mysore, against the orders of conviction by the Assistant - Sessions Judge, was allowed by the Sessions Judge and the accused was acquitted on 13th November 1935 on the ground that the trial in the Lower Court was illegal owing to the misjoinder of charges. A retrial has, however, been ordered.

I have the honour to be,
Sir,
Your most obedient servant,

Inspector General of Police.

No. G1-23575
Enc.

OFFICE OF THE DISTRICT MAGISTRATE,
MYSORE DISTRICT.

Dated, Mysore, 17th November 1935.

4050 of 35
P

FROM

B. T. KESAVAIENGAR, Esq., B.A.,
~~THE~~ DISTRICT MAGISTRATE,
MYSORE DISTRICT, MYSORE.

CHIEF SECRETARY
Law
22 NOV. 1935

To

A. V. RAMANATHAN, Esq., B.A.,
Chief Secretary to the Government of
Mysore, Bangalore.

SIR,

In continuation of this Office No.G3.235/35-36 dated 14/17th November 1935 regarding the disposal of the appeal in the Mandya Cement Case, I have the honour to state that the accused Krishna Rao in the Mandya Cement Theft Case will stand retrial before the Assistant Sessions Judge at two separate trials for different offences. The case may be posted on the 25th instant and will proceed from ~~xx~~ day to day. Mr. K. Ramaswami the Public Prosecutor will proceed with the case. Mr. H.M.Nurulla, the investigating Officer of the case has been ordered to be deputed at least a week before the commencement of the trials to assist the Public Prosecutor to prepare the case afresh.

I have the honour to be,
Sir,
Your most obedient servant,

DISTRICT MAGISTRATE,
Mysore District.

No. G3. 235/35-36.
Encl.

OFFICE OF THE DISTRICT MAGISTRATE,
MYSORE DISTRICT,

Dated, Mysore...17th...November...1935.

4051 of 35

From

B. T. KESAVAIENGAR, Esq., B.A.,
District Magistrate,
Mysore District, Mysore.

CHIEF ... Rt.
Law
22 NOV 1935

A. V. RAMANATHAN, Esq., B.A.,
Chief *Secretary to the Government of Mysore,*
Bangalore.

SIR,

XXX
mc
22/11

With reference to your No.P. 3055/Law. 205-34 of the 7th instant calling for information regarding the stage at which the appeal filed by accused Krishna Rao in Mandya Cement Theft Case stands, I have the honour to state that the Sessions Judge, Mysore Division has set aside the conviction and sentence on the ground that the trial before the Assistant Sessions Judge was illegal on account of misjoinder of charges and accused - Krishna Rao is ordered to be tried again on proper charges for the offences committed by him.

I have the honour to be,

Sir,

Your most obedient servant,

DISTRICT MAGISTRATE,
Mysore District.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

No. P-3405

Dated, Bangalore, 22nd November 193 5

From

The *General Secretary to the Government of His Highness the Maharaja of Mysore.*

To

The District Magistrate,

Mysore District.

Sir,

With reference to the correspondence ending with your letter No.G 3.235/35-36 dated 17th November 1935 regarding the retrail of the Mandya Cement theft case, I am directed to request that a copy of the order of the Sessions Judge in appeal may kindly be obtained and sent for information of Government early. Government note that Mr.Ramaswami, Public Prosecutor, will conduct the prosecution in the retrial..

I have the honour to be,

Sir,

Your most obedient servant,

For General Secretary to Govt.

Appendix F G—1]

SUBJECT.....

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Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the *193*

Date of issue.....

Signed by .....

List of enclosures.....

Copied by .....

Examined by.....

Section Law

File No. 905-34

Serial N

No. P 3405

To

The D.M. Mysore

Sir,

With reference to the Correspondence ending with your letter No. G3-335/35-36 dt 17.11.35 regarding ~~that the Sessions Judge, Mysore has~~ the order of the Sessions Judge in ordering a retrial in the Handya Cement case. I am directed to request a Copy of the order may kindly be obtained and sent for information of Govt early - Govt note that the Ramaswamy PPr will conduct the prosecution in the retrial -

Law 22/4 Secy Govt TSD 24

MEMORANDUM

To

29. 11. 1935.

The Public Prosecutor
Mysore Division, Mysore

The General Secretary to the
Government of H.H. the Maharaja of
Mysore, Bangalore.

GENERAL SEC
30 NOV 1935
P.W.

Rep. 30/4

Sir,

With reference to your letter No. P. 345/Law. 205-34 dated the 22nd instant addressed to the District Magistrate, Mysore about the Conduct of the retrial in the Maniya Canal defalcation case, I have the honor to state that the authenticated Copy of the Judgment in Mysore Criminal Appeal No 40/35-36 has been taken away by the Executive Engineer, Irwin Canal Division. He has been requested to return the Copy before this evening for being submitted to Government.

Under the instructions of the District Magistrate, I moved the Court of Sessions to transfer the case from the file of the Assistant Sessions Judge (Mr. G. Paramashivaiah) to the Court of the Additional Assistant Sessions Judge (Mr. S. Krishna Murthi) The Special Sanction of the High Court required for this purpose was solicited and obtained by the

D 1621—GPB—100 Reams—19-2-32

(Please reply overleaf)

MEMORANDUM

To *193*

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The Sessions Judge. The case has accordingly been transferred to the file of the Additional Assistant Sessions Judge. In view of the directions given by the Appellate Court, the charges originally framed and amended by the Assistant Sessions Judge have to be split up. In so splitting up the charges not less than three separate trials for different offences that cannot be clubbed together either under Sec. 234 or under Sec 235 Cr. P.C., will have to be held on the re-trial. Nevertheless the case may not occupy more than three weeks.

As the re-trial cannot commence before the 2nd January next, I beg to submit the cause of the delay. Even if the summonses are sent out now the re-trial can only commence at least 10 days hence. The Court will have to adjourn for the Christmas vacation from 23. 12. 1935 before which date it is not possible to finish the case. The unduly long detention of the accused is very much regretted. I was even prepared to entrust the conduct of Sessions cases of Hassan and Mysore posted in the month of December to one of my juniors. In fact I have another

MEMORANDUM

To 193

full responsibility to arrange for my normal routine criminal work without putting the Government to extra charges. Even in the month of January I have to transfer some of my other Sessions Cases to my juniors. For the sake of convenience to all I have suggested to the Additional Assistant Sessions Judge to start the trial on 2.1.1936.

I have the honour to be

Sir,

Your most obedient Servant

Public prosecutor

627/21

3266
63-P653

MEMORANDUM

From

The Public Prosecutor

Mysore Division

To

30th Nov 193

The General Secretary to the Government

of H. H. the Maharaja of Mysore

Bangalore

GENERAL SECRETARIAT

2- DEC. 1935

In continuation of my report No 618 2 yesterday I have the honour to submit herewith Copy of Judgment passed in M C. a No 140 of 35-36 (C. R. Krishna Rao vs Government) for the information of the Government

I have the honour to be

Sir

Your most obedient Servant

P Ramachandra Rao

Public Prosecutor

WD 1621—GPB—100 Reams—19-2-32

[Please reply overleaf

In the Court of the Sessions Judge, Mysore Division, Mysore
Mysore, Dated 13th November 1935.

Present :- C. Abdul Ghani, Esq., B.A.,B.L., Sessions Judge.

Mysore Criminal Appeal No. 40/35-36.

A. Krishna Rao. Appellant 1st accused.

Vs.

Govt. of Mysore. Respondent -Complainant.

Appeal against the conviction and sentence passed by the Assistant Sessions Judge, Mysore under sections 409 (3 counts) and 477(a) I.P.C. in Sessions Case No.8/34-35

JUDGMENT

1. The appellant was tried by the Assistant Sessions Judge, Mysore, in Sessions Case No. 8/34-35 for forgery, criminal breach of trust and falsification of accounts. There was another accused in the case who was charged with abetting breach of trust and falsification of accounts on the part of the appellant. That accused has been acquitted. The appellant was acquitted of the offence of forgery, but was convicted of the other offences with which he was char

2. In this appeal, it is contended that the trial illegal on account of misjoinder of charges, inasmuch three charges under section 409 I.P.C. cannot be said form one transaction with the three acts of falsificat of accounts with which the appellant is charged. It is urged that the charge relating to the breach of trust on 6-6-34, can by no stretch of imagination be treated as single transaction with the acts and charges of falsific ion of accounts, and that the charge under section 467 I. cannot form the subject of a single trial along with the charges of breach of trust on 6-6-34 or with the charges under section 477(a). Misjoinder on another ground is pleaded, viz., that the charge under 409 I.P.C. dated 28 34 cannot in law amount to any breach of trust at all, t the offence, if any, committed may be one under section 379 I.P.C., and this cannot be clubbed with the other two charges of breaches of trust. There are also allegations of a mass of irrelevant and inadmissible evidence having been

been recorded in the case to the serious prejudice of the interest of the appellant. This aspect I need not consider, because it is not seriously pressed

3. The facts of the case, briefly, as they pertain to this appeal are as follows:- The appellant was the store - keeper in the office of the Executive Engineer, No 5 Canal and Project Division, Mandya. For the work connected with that Division, cement was being obtained from Messrs. B. V. Narayanswamy & Co., Bangalore, who were paid through the Bank of - Mysore. After obtaining from the firm the receipt of payment from the Bank of Mysore used to send the receipt to the Executive Engineer, who used to acknowledge the receipt and send a copy of the letter to the firm also. Ext.P.140 dated 8/11-12-33 in this case is the office copy of one such acknowledgement written to the Bank and a copy was sent to the firm as can be seen from the endorsement thereon. There was some - place available between the contents of the acknowledgment and the signature of the Engineer and in this space an order for the supply of 60 tons of cement has been typed, apparently later, with a new ribbon or with a different typewriter. This is marked ex.P.164(a). The case for the prosecution is that this portion 164(a) was forged by the appellant in an innocent acknowledgment. The appellant is charged with an offence under 467 on this count. In pursuance of this - forged order, 200 bags of cement were sent by the firm and received in the Mandya Railway Station on 28-1-34. The - appellant is said to have misappropriated this consignment and booked the wagon in which they were received to Mysore his own name in order to sell that cement to P.W. 1. For this he has been charged for an offence of breach of trust under 409 I.P.C. To conceal this breach of trust and the forgery, the appellant had to enter the order in the "TO" register, and to make a false entry, Ext P 139(c) in that register, and a - false entry Ext.p 269(d), in the register of Daily receipts and a third false entry Ext. P 270(b) in the Measurement The idea was to show that an order had been placed, that cement

cement had been received and had been expended. In respect of these falsifications of accounts, the appellant is charged under 477(a). The Magistrate who held the preliminary enquiry, committed the appellant for trial on the above said charges only. He committed another accused, who was the accountant, for abetment of the charge of misappropriation against the appellant.

4. Before the learned Assistant Sessions Judge who tried the case, the Special Public Prosecutor who was appointed to conduct the case, filed two applications- one requesting for a separate trial of each of the accused as he apprehended that a joint trial may be illegal or irregular and the other for the addition of two more charges of breaches of trust as against the appellant for misappropriating 200 bags of cement on 19-2-34 and 100 bags on 6-6-34. The other accused in the case also presented an application for his separate trial. The learned counsel for the appellant when questioned about these applications stated that the matter was between the Court and the Public Prosecutor and he had nothing to say. That is at least what appears from the record. The learned Assistant Sessions Judge held that both the accused could be tried together xix in view of the provisions in clauses (a) and (e) of section 239 Cr.P.C. In his opinion, the acts attributed to the appellant and the other accused were committed in the course of the same transaction. The learned Assistant Sessions Judge went further and added two more charged of breach of trust against the appellant, as requested in the other application of the Special Public Prosecutor.

5. So far as the appellant is concerned, the charges for which he was tried were (i) for an offence under 467 I.P.C. in respect of the alleged forgery committed by him on 11-12-33. (ii) three charges of breach of trust under section 409 I.P.C. alleged to have been committed by him on 28-1-34, 19-2-34 and 6-6-34, in respect of cement bags

bags received from the firm of Narayanaswamy & Co., and meant for the Canal Division, Mandya, and ~~477(a)XXXIP.C.~~(i) three charges of falsification of accounts under section 477(a)I.P.C. It is contended that the acts constituting the offences with which the appellant is charged do not constitute the same transaction, and as such a single trial of the appellant for all these is in contravention of the provisions of section 233 Cr.P.C. and is illegal.

6. The general rule as laid down in section 233 Cr.P.C. is that for every distinct offence there must be a separate charge and that every such charge must be tried separately. Certain exceptions to this rule have been recognised in sections 234 to 239 inclusive. Section 222 may also be considered as an exception to this general rule. These exceptions provide for a joint trial of several persons or of several offences under certain circumstances detailed in those sections 236,237 and 238 have no bearing on the case in question and may be excluded. Section 222 also has no bearing as it refers the breach of trust of money only. In the case under consideration, the breach of trust ~~xx~~ is in respect of cement bags and, moreover the charge is not framed according to the provisions of section 222. The only section with which we are concerned in this case are sections 234,235 and 239. The learned committing Magistrate had these provisions in mind when he framed the charges against the appellant and the other accused in the case and he has taken pains to refer to these sections and consider them before he framed the charges. Before the learned Assistant Sessions Judge, however, there was an application for a separate trial of each of the accused for the that a single trial of both persons, in circumstances of the case may be illegal. As the charges stood then, the learned Assistant Sessions Judge considered that the provisions of section 239 permitted a joint trial of both the accused. To that extent, the learned Assistant Sessions Judge may have been right, but when he added two additional charges of breach of trust, the

given to the term, though there are decisions to the contrary, including one in our own High Court. For example in 138 I.C. 618, a single trial, for charges of criminal breaches of trust and for falsification of accounts in respect of three items on different dates, was held to be not permissible under the law. Three different acts of embezzlement and falsification of accounts committed at different times, were considered not to be connected as part of the same transaction within the meaning of section 235, relying on the decision in 49 Bom. 892. The decisions in 22 I.C. 729 and 136 I.C. 136 are to the same effect. In Mysore also, there is the decision reported in 31 M.C.C.R. 12 to the effect that three separate items of criminal breach of trust and three items of falsification of accounts in respect of the said three items of criminal breac of trust, cannot be said to form a single transaction. The Mysore decision has approved of the decisions in 30 Mad.378 and 41 Cal. 722. There are, however, some decisions, such as, those reported in 60 I.C. 422 and 136 I.C. 450 to the effect that, if the falsification of accounts are in respect of the breaches of ~~three~~ trust committed and to screen those breaches of trust, the transaction is the same and a joint trial is legal. I am, however, bound by the decision in 31 M.C.C.R. 12, which has not as yet been overruled, so far as I know. I was referred to the decision in 40 M.C.C.R. 399. In that case, people, who are charged with making counterfeit coins were tried together with those who were alleged to have passed the same counterfeit coins, in the same trial. It was held that the trial was legal as the transaction was the same and fell under section 239(c) of the Cr.P.C. The allegations were that the same coins, as were counterfeited by some of the accused were uttered by others some months later. Apparently, therefore, the transaction was the same according to the prosecution, though the evidence to prove these allegations might have been weak. In the case under consideration, even if one does so far as to admit that the forged order, the misappropriation or theft of cement and receipt in pursuance of that order on 28-1-34 and 1-2-34,

19-2-34, and the falsification of accounts to screen these acts are all acts done in the course of the same transaction, yet, there is the breach of trust in respect of 100 bags received on 6-6-34, which can, under no circumstances, be considered as part of the same transaction. This consignment of 100 bags on 6-6-34 was received in pursuance of a genuine order placed by the department. It has nothing to do with the order forged by the appellant. The falsification of accounts has no connection with this last item of breach of trust or even with breach of trust of 19-2-34 for that matter. The co-accused has nothing to do with the forgery.

7. The Public Prosecutor, however, urged that there was an agreement between the appellant and P.W. 1 to the effect that the appellant should supply cement to P.W.1 at Rs 58/- per ton - and that the appelant carried out this agreement by misappropriating cement that was intended for the canal Division, Nandyal His argument is that it does no matter whether the appellant placed forged orders or committed breach of trust or theft of cement at different times, so long as it was to carry out the agreement between the appellant and P.W.1. If the idea was to carry out the agreement by whatsoever means and at whatsoever times, all the acts done by the appellant should be treate one transaction. I am afraid that I am unable to appreciat

the charge of forgery cannot be considered as being - in pursuance of the agreement. From the point of view of the Engineer or the Government, who are the sufferers in this case, it is not apparent how placing a forged - order or falsification of accounts or misappropriation or theft committed by the appellant at different times can be treated as one transaction. In 13 Mys L.J. 48 to which I will have occasion to refer later, two - decoities committed by the same persons, on the same road and during the same night, were treated to be different transactions, as from the point of view of the sufferers the two decoities could not be treated as one transaction. In 33 Mad. 502 there is the following passage, which I may quote with advantage:- " For instance, in this case, what is said to connect acts charged into one transaction is the allegation that these acts were - committed by the six persons in pursuance of the systematic scheme for defrauding those members of the public, who might subscribe to the fund. If this contention is sound, if the company was carried on 10 to 12 years and hundreds of acts of embezzlement were committed during that period, the accused would be liable to be tried at one trial for all these - offences. Obviously, this cannot be the scope of section 235 ..... community of purpose or design, and continuity of actions are essential elements of the connection - necessary to link together different acts into one and the same transaction..... As regards community of purpose it would be going too far to lay down that the mere - existence of some general purpose or design is sufficient to make all acts done with that object in view part of the same transaction. If that were so, the result would be startling..... The purpose in view must be some thing particular and definite, such as, where a man with the object of misappropriating a particular sum of money or of cheating particular individual of certain sum, falsifies books of account or forges a number of document.

documents. In view of the above observations, it is fairly clear that the alleged agreement between the appellant and P.W. 1 cannot convert the different acts of forgery, breach of trust, falsification of accounts and cheating into one transaction committed as they are at different times, and in respect of different consignments, some on a forged order, and one on a perfectly genuine order. The alleged breach of trust on 28-1-34, is not breach of trust at all. It appears to be a theft. The cement bags were received on 28-1-34 and were despatched to Mysore the same day, before the appellant was authorised to receive the consignment under Ext.P.112 on 29-1-34. Till the railway receipt -- P.112 was endorsed over to the appellant on 29-1-34, he had no authority to receive the goods and cannot be treated as being entrusted with the goods. It is that endorsement on 29-1-34 that passes title to the goods in the railway waggon and the date of delivery of the railway receipt the consignee is the date of delivery of goods- See 765, 108 I.C. 801 and a decision of our High Court in M.L.J. 201. The evidence of P.W. 21 and the cancellation the receipt Ext.P.112 on 28-1-34 prove clearly that the appellant took charge of the waggon on 28-1-34 alone, and booked to Mysore, before he could be considered to have been entrusted with the goods. Before entrustment, there can be no breach of trust. See 18 M.C.C.N. 3, 108 IC. The offence committed in respect of bags received on 28- is not a breach of trust, though it may amount to theft. From the above discussions, it is quite clear that several acts on the part of the appellant can hardly treated as acts perfo[illegible] the course of the same

the learned Public Prosecutor that the tendency in British India, lately was to treat such illegalities as curable irregularities contemplated in section 537 of the Cr.P.C. unless it was shown that the appellant has, as a matter of fact, been prejudiced by the trial. Ever since the pronouncement of the Judicial Committee in 25 Mad. 61, it has been the general practice to assume that if a mandatory provision of the code has been infringed in framing the charges, the Court must of necessity be held to have failed in administering justice to the accused. But when the Judicial Committee had occasion years later, to refer to 25 Mad. 61 in the decision reported in 100 I.C. 227, they pointed out that section 537 affords no real ground for such an assumption, and indicated that the impugned procedure must be one not only forbidden by the Code but also works injustice to the accused. After this decision of the Privy Council in 1926, the later decisions of the several High Courts adopt this modified view See 31 Cr.L.J. 536 (F.B.), 8 Indian Rulings All. 269 32 Cr.L.J. 30 etc,. In Mysore, however, there has not been as yet, so far as I know, any such change of view. It has been consistently held that a breach of any mandatory provision of the Code of Criminal procedure makes a trial illegal not curable by section 537 Cr.P.C. Vide 14 M.C.C. 21, 4 M.L.J. 80 and 13 M.L.J. 48. This last decision reported in 13 M.L.J. 48 is a very recent one, in which the same point was raised but was not accepted. I may quote from that decision the portion which is relevant to this case: "Here we are outside and beyond the region of error, omission or irregularity as I regard the case. Here we are in the more serious region of definite illegality. The Code lays down in section 233, the general rule that for every distinct offence, there must be a separate charge and that every such charge must be separately tried. This is the general rule to which certain exceptions have been provided. Those exceptions, like any other statutory -

statutory exceptions to the general rule ~~xxxt the~~ must be strictly construed. If the general rule which is a most important and salutary rule, is violated by the exceptions being over-stepped then the whole trial is illegal." Whatever may be the trend of decisions in the High Courts in Brit India, I have the to follow the very recent ruling of our own High Court and hold that the trial is illegal, in as much as the provisions of sections 233 Cr.P.C. have been violated. The convictions of the appelant and the sentences passed on him are accordingly set aside. The logical result on the trial being illegal would be, in a case of this magnitude and importance, to order a retrial of the appelant as well as the co-accused who has not appealed, because he was acquitted; but in as much as the co-accused who was acquitted after weighing the evidence against him and agreeing with the unanimous opinion of the assessors, there is no need to order the ~~xxtxtxtx~~ re-trial of the co-accused, though the acquittal has no legal effect, the trial itself being illegal. This is permitted as per decisions of ~~the~~ High Court in 13 M.L.J. 48. It is possible to adopt a similar course, in respect of the appellant also, so far as the charge of forgery is concerned; but that is the only charge against the appelant which can be tried exclusively by a Court of Sessions. If that charge goes, the remaining charges can be tried by a First Class Magistrate. Considering the importance of this case, I think it is reasonable, to ~~xxxxx~~ a re-trial of the appellant for all the offences with which he was charged but with a direction that care should be taken to avoid a mis-joinder, keeping in view the matters discussed above. Separate trials may be held for distinct ~~different~~ offences which cannot be clubbed together either under section 234 or 235 Cr.P.C. The desirability of altering the charge of breach of trust said to have been committed on 28-1-34, to one of theft, may be kept in view.

Dictated to the Stenographer and pronounced in Open court.

4382/35 76

WD 03342—GPB—50,000—18-7-35

193

From

The Public Prosecutor,
Mysore Division.

To

The General Secretary to the
Government of Mysore
Bangalore

Dated 15.th Jany 1936.

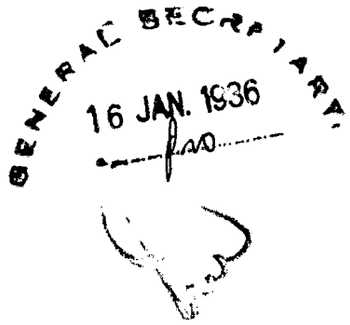
Despatched

Received

General No. 777

No.

Enclosure No. One copy of Judgt



Sir

I have the honor to submit herewith for the information of Government an authenticated copy of Judgment in Sessions Case No 1 of 1935-36 on the file the Additional Assistant Sessions Court Mysore (Government vs R. Krishna Rao).

The accused Krishna Rao was committed by the Special First Class Magistrate of Mandya on 3 charges viz Forgery under Section 467 (ii) Criminal Breach of Trust under Section 409 IPC (iii) Falsification of accounts or false Entries under Section 477 A.

The accused was first tried on the above charges before the Assistant Sessions Judge, Mysore in Sessions Case No 8/34-35 The learned Assistant Sessions Judge acquitted the accused on the charge of forgery. In addition to one charge of Criminal breach of Trust two more Cases of Criminal breach of trust had been framed by the Assistant Sessions

Sessions Judge the accused was convicted on each of those charges and also on the charge of falsification of accounts and sentenced to one years rigurous imprisonment on each count, the sentences being directed to run concurrently.

On appeal in MCA. No 40 of 35-36 the accused was acquitted on the ground that the trial was bad for misjoinder of charges and a retrial was ordered on all the charges including the charge of forgery in respect of which the accused had been acquitted by the Assistant Sessions Judge.

On my application to the Court of Session the fresh trial directed by the appellate Court was transferred to the file of the Additional Assistant Sessions Judge. In this Court the accused will be tried in three cases viz (i) Criminal breach of trust of one Hundred bags of Cement committed on 6.6.34 (This is the case in which the accused was convicted and sentenced on the 13th instant. ii) Forgery under Section 467 and Criminal breach of Trust Committed on 28.1.1934 and 19.2.1934 in respect of the misappropriation of 200 bags of cement on each date (iii) falsification of accounts or false entries made in the Stock Register measurement books and To Register.

The 2nd trial has to commence from to day. It will last for at least five days The next trial for 3 offences under Section 477 A will commence about the 27th instant and be over before the End of the month. There are above a dozen Charge sheets for breach of trust and falsification of accounts pending against the accused before the Special Class Magistrate Mandya The Expediency of withdrawing the Charge sheets will be considered and a report will be submitted to the District Magistrate in that respect, after the cases pending before the Addl Asst Sessions Judge are finally disposed of

I have the honor to be
Sir
Your most obedient Servant
(Recommended)

Public Prosecutor

IN THE COURT OF THE ADDL. ASSISTANT SESSIONS JUDGE,
MYSORE.

Dated: This 13th day of January 1936.

Present: S. Krishna Murti, Esq., B.A., LL.B.,
Additional Asst. Sessions Judge.

Sessions Case No. 1 of 1935-36.

Complainant:		Accused:
Government of Mysore.	Vs.	R. Krishna Rao.

Judgment.

1. This accused, who was store-keeper in the office of the Executive Engineer, No. V Irwin Canal Division at Mandya, and M. Singriengar, who was accountant or manager of that office, were committed to sessions by the Special First Class Magistrate of Mandya, on several charges of criminal breach of trust, falsification of accounts, forgery and abetment. The charges framed by the Comitting Magistrate against this accused were (i) for an offence under Sec. 467, I.P.C., in respect of an alleged forgery committed by him on 11-12-1933 (ii) one charge of ~~20~~ breach of trust, under Sec. 409 I.P.C., in respect of 200 bags of cement, said to have been committed by him on 28-1-1934 and (iii) one charge under Sec. 477 (A) I.P.C., of having made false entries in serveral registers on

or about 11th December 1933 and 28-1-1934. The other accused (M. Singriengar) was committed on a charge of abetment in respect of the offence of criminal breach of trust said to have been committed by this accused on 28-1-1934 in respect of 200 bags of cement.

2. Both the said accused were tried together for all the said charges by the Assistant Sessions Judge, Mysore in Sessions Case No. 8 of 1934-35. Two charges of criminal breach of trust were added against first accused by the Assistant Sessions Judge. One was for criminal breach of trust in respect of 200 bags said to have been misappropriated on 19-2-1934 and the other was in respect of 100 bags said to have been misappropriated on 6-6-1934. Two charges of abetment of the said offen were added against the other accused also in respect of the charges added against first accused. This accused was convicted of all the charges except that under Sec. 467 I.P.C., and the other accused was acquitted under al the charges. On appeal, the Sessions Judge held, in Mysore Criminal Appeal No. 40 of 35-36 that the said tri was bad on account of misjoinder, set aside the convicti and ordered a re-trial with the direction that separate trials should be held for distinct offences, which canno be clubbed together, and that misjoinder should be avoid

false entries and falsification of accounts said to have been made on different dates in different registers, and books relating to the stores. Thereafter, the Public Prosecutor stated that he proposed to proceed in this case with the charge under Sec. 409 I.P.C., relating to the offence said to have been committed on 6-6-1934. Hence, the present trial is only with regard to that offence. Accused has pleaded not guilty to that charge.

4. The case for the prosecution is briefly this:

Accused was store-keeper in the office of the Executive Engineer, No. V Irwin Canal Division at Mandya, since about the middle of July 1932 till he was arrested on 23-9-1934. Large quantities of Char Minar cement were being ordered, through Messrs. B. V. Narainswami & Co., of Bangalore, for the use of the works in the said Division. Considerable portions of the cement so got were being misappropriated and this fact came to light by means of an anonymous letter addressed to the Chief Engineer in the middle of September 1934. After the said letter was placed in the hands of the Executive Engineer of the Division, on 18-9-1934, he counted the number of bags actually found in the stores on 22-9-1934, looked into the accounts and found a shortage of 1335 bags. He gave a complaint to the Police against this accused on 23-9-1934, got him arrested and arranged for a special audit in respect of cement, after reporting the matter to the Chief Engineer and the Comptroller. The result of that special audit was that shortage or defalcation to the extent of 1337 bags was traced after scrutinizing the accounts for the whole period of accused's store-keepership. On investigation by the Police, it was found that, among other items of misappropriation, accused had misappropriated 100 bags of cement on 6-6-1934

in the following manner:--A consignment of 460 bags of cement was received on 6-6-1934. Accused took delivery thereof at Mandya Railway Station in his capacity as store-keeper. He paid the freight of Rs. 481-6-0 for the same as well as the unloading and carting charges and instead of carting all the 460 bags to the stores, he booked 100 bags in his own name to 'self' at Mysore and sold those bags to Hakim Mahomed Gouse, a hardware merchant in Mysore. It is in respect of these 100 bags that accused is tried in this case.

5. The anonymous letter which exposed the fraud that was being perpetrated in the stores is marked as Ex.P50 and Mr. C. T. Narasimha Iyengar (P.W.2), who is the Executive Engineer of the Division since 26-3-1934 since 26-3-1934, has told us that the Deputy Chief Engineer placed Ex. P50 in his hands on 10-9-1934, that he paid a surprise visit to the stores on 22-9-1934 and found only 398 bags of cement therein, that the correct balance, as per books, that day, should have been 1735 b that, on investigation, he found a shortage of 1335 bags that he gave the complaint (Ex.P54) to the Police Inspec next day (23-9-1934) and that he also reported the matte to the Chief Engineer for arranging for a special audit. The special audit was conducted by Mr. S. Govinda Rao

in Ex.P54. Mr. A. Subba Rao (P.W.18) and Rajiengar (P.W.19) want to take the credit of having compiled Ex.P79, but I am not prepared to believe them on that point. According to Ex. P79 and the depositions of Mr. Sharma (P.W.9) and P.Ws. 15 and 19, shortage as indicated below existed on the following dates:--(i) The correct balance of bags in the stores on 31-12-1933 should have been 915, but P.W.9, who counted the actual quantity on hand in accused's presence on that day, as per Ex. P71, found only 475 bags. (ii) The balance of bags on 19-4-1934 should have been 993 and not 100 only, as shown in Ex. P4 by accused, while obtaining orders from P.W.2 for a fresh supply. (iii) The balance of bags in the stores on 25-5-1934 should have been 1084 and not 50 only, as mentioned by accused in Ex.P2, for obtaining orders from 2 for getting a supply of two waggon-loads or 920 bags. (iv) The correct balance of bags on 1-7-1934 should have been 2234, but the quantity shown as the balance in Ex. D1, as on hand at the close of the half year ending with 30-6-34, was 793 only. (v) The balance of bags on 3-9-1934, the date on which the Executive Engineer (P.W.2) purports to have counted the stock, should have been 1861, but it is clear that it was far less than that. (vi) The correct balance of bags on 22-9-1934 should have been 1735 and not 396 only, which was the quantity actually found by P.W.2. It is, therefore, clear that defalcations were going on, on a large scale, for a long time, prior to 18-9-1934.

6. We are not concerned in this case with the details of the manner in which all these defalcations were carried out and about the person who was actually responsible for them. The Police have investigated into the details of the manner in which 100 bags were

misappropriated on 6-6-1934 and the manner in which 120 bags were misappropriated on 9-5-34, just prior to 6-6-34 and the ~~xxxx~~ manner in which 224 bags were misappropriate on 16-6-34, very soon after 6-6-34. The prosecution has adduced evidence mainly about these three acts of mis- misappropriation ~~xxxxxxxxxxxxxx~~ in this case. Evidenceabout similar acts. preceding and following the transaction for which an accused is charged is relevant under Secs. 14 and 15 of the Evidence Act and this principle has been clearly enunciated with respect to breach of trust in the well-known case of SITARAMACHAR VERSUS GOVERNMENT OF MYSORE (35 Mysore Chief Court Reports 319). The defence has also not contended in this case that such evidence is irrelevan

7:- There were several defects in the procedure of the office of the Executive Engineer, No. V Irwin Canal Division at Mandya, both on the executive and accounts side; as sworn to by the Assistant Comptroller (Mr. V. T. Srinivasan - P.W.16), who was responsible for the special audit conducted after the defalcations came to light. The defects on the executive side, enumerated by P.W.16, are (i) that stock was not actually checked by the Executive Engineer, when passing indents or bills; (ii) that the measurement-book was

Rs. 135/- could have been made by ordering a full waggon-load, the Executive Engineer, who ordered the consignment, explained that half waggon-loads were ordered, because accommodation in the stores was insufficient and that his successor passed on that explanation without verifying the capacity of the stores The defects on the accounts' side enumerated by P.W.16, are (i) that bills were passed without checking them with reference to the office-copies of the indents; (ii) that the accountant or manager did not ensure that office-copies of indents passed through him; (iii) that the measurement-book and the bill were both allowed to go simultaneously to the Executive Engineer fpr signature; (iv) that, though the estimates in the Division provided mostly for the use of surki-mortar and not cement (which was actually used), the accountant did not raise any objection to the use of cement; & (v) that one consignment of cement, got in June 1934 and paid for in July 1934, was not posted in the A. Form Register till Sepetember 1934. It has also been elicited from P.W.16 in cross-examination that the periodical counting had to be done by a Gazetted Officer and that the test-audit of November 1933 showed that the counting had been done only by an overseer. P.W.16 has sworn that these defects made the defalcations possible and that they were largely responsible for the defalcations.

Executive Engineer is the officer responsible for seeing that the cement received from the suppliers is put into the stores and that he did not see whether the 440 bags got under the railway receipt (Ex.P72) were actually received into the stores. He has also admitted that the A. Form Register had been posted only up to the end of February 1934, when he handed over charge to Mr. C.T.N. Iyengar (P.W.2) on 26-3-34 and that no attempt was made before handing over charge to see whether the actual balance of cement tallied with the book-balance. The fact that the periodical counting has to be done by a Gazetted Officer is clear from the memo (Ex.P59) put up by P.W.5 in July 1934. In spite of it, P.W.10 had passed a memo like Ex.P70 in 1933 directing Mr. Sharma (P.W.9) to do the half-yearly counting. P.W.9 has done the half-yearly counting on two occasions in 1933; viz., on 4-7-1933, as per Ex. P69(b), and on 31-12-1933, as per Ex. P71. Though the half-yearly forecast for 1933-3 is admitted by P.W.10 to have been 300 bags, it did not occur to him, even when he made the endorsement on Ex.P72 for 440 bags and passed other orders relating to that consignment, that the forecast had been exceeded and that the indent was a bogus indent. Mr. C.T.N. Iyengar (P.W.2) has also conceded that he doesn't remember whether the A. Form Register had been posted up-to-date when he took charge on 26-3-34. He has stated that he has initialled the A. Form Register once a month but has admitted that he has not checked the stores, before initialling it, with reference to the Daily Receipts Register (Ex.P52) and the Daily Issues Register (Ex.P53). He has seriously asserted that he counted the articles on 3-9-1934 and that he found 793 bags that day, as per Ex. D1(a). But Ex. D1 is only a statement of stock

on hand on 30-6-1934 prepared by the stores accounts clerk (Rajlingam - P.W.19) and the figure '795' above it the place (Ex. D1(e)) is only the balance supposed on hand on 30-6-1934. Ex. P79 shows many transactions between 30-3-34 and 3-9-34. Hence, it is clear that the counting said to have been done on 3-9-34 is absolutely imaginary. He has also admitted that he signed certificates in form no. 103 A like Exts. P13 and P47, relying solely on stock-certificates like Ex. P38(a) made by accused on firm bills and without satisfying himself that the stock had been physically put into the stores. It is clear from this that the measurement-book, the firm bill and the certificate in Form No. 103 (A) were all going simultaneously for the Executive Engineer's signature and that they were all passed, relying on the entries made by the store-keeper (accused). Orders for getting supplies of cement were passed on memos like Exts. P2 and P4 which did not state the actual balance of cement in the stores on which evaded such statement by simply mentioning the absurd 100 bags and 50 bags were on hand out of the consignments received just prior to the dates of those memos. Though, according to the letter (Ex. P56) written to the post-office, the accountant was authorised to receive, at the post-office window, registered-letters and insured-art cles addressed to the Executive Engineer, accused, who was neither the accountant nor the cashier, was allowed to receive such letters and articles, as proved by Exts. P7, P28, P38(a), P38(b), P40, P40(a) and P58. The insured letters received from the suppliers for paying the railway-freights on the consignments of cement, generally contained amounts coming very nearly to Rs. 500 - and accused was allowed to handle such large amounts, though the sub-cashier alone to whom could not exceed Rs. 40/- as admitted by P.W.2. The fact that cement was ordered in two half-wagon-loads by P.W.10 and that objection was taken thereto by the Comptroller is conceded by P.W.5.

But That P.W.10 sent up an explanation for the same is also clear and that the said explanation, which was to the effect that there no accommodation in the stores for a full-waggon-load, was passed on by P.W.2 is capable of leading to the inference that P.W.2 had never visited the stores before passing it on.

9. No technical or expert opinion is required for the position that such indifference to duty and disregard of codal rules by responsible Divisional Officers gave facilities for occurrences of the kind we are now dealing with. There is a big volume known as the Public Works Accounts Code which contains elaborate rules fixing the duties and responsibilities of Divisional Officers, Accou and Store-keepers in respect of stores and prescribing the way in which various accounts etc. have to be maintained and checked in order to safeguard leakage or misappropriat Article 171 thereof prescribes the duties and responsibil of the Executive Engineer in respect of measurement-books relating to stores. Article 251 says how accounts of daily receipts and issues have to be maintained. Article 252 relates to monthly abstracts of receipts and issues of stores. Article 359 makes the Divisional Officer primari responsible for all the stores. Articles 363 and 365 say that periodical counting has to be done only by a Gazetted Officer. Articles 662 to 665 prescribe the duties of the Divisional Accountant. The case for the prosecution is that all these codal rules were practically ignored in No. V Irwin Can Division at Mandya and that accused was allow a free hand and the sole master at least in so far as the transactions relating to cement were concerned.

So far as these three sets of misappropriations are concerned, the entries adopted by the accused is said to have been as books an appreciable part of the consignments that ever there in his custody and to dispatch it almost immediately to Mysore or Seringapatam in the same waggon in which it had arrived, to carry only the balance to the stores and to endorse the railway receipt for the number of bags booked by him to merchants in Mysore who would take delivery and pay for the same. As already pointed out, the question whether Ex. P2 was a bogus indent and whether the consignments received as per the railway receipt (Ex.P72) was not in the pursuance of that bogus indent requires no serious notice in view of the, because P.W.10 is practically the only witness speaking to that point now. The other three items will be taken up one after another now.

14. - A requisition like Ex. P1 was sent to the Sub-Divisional Officer (P.W.1) from the Executive Engineer's Office on 11-4-34 asking him to state his requirements of cement for the three months ending with June-1934. He sent his reply - Ex.P1(a) - on 12-4-34 stating that 56 tons were required. The accountant (P.W.5) made the note (Ex.P1d) thereon asking the store-keeper to submit it with other indents, thus ignoring the fact that only surki-mortar was provided for in the estimates of the Division. Accused received Ex. P.(c) on 16-4-34 as per pencil note (Ex.P1b). Soon after that, accused put up the memo (Ex.P4) on 19-5-34 to the effect that out of 440 bags of cement received on 7-5-34, there were only about 100 bags in stock, that the requirements of Nos. 1 and 2 sub-divisions worked up to 30 June 34 or 41 days for the year ending June 1934 and soliciting orders for indenting for one waggon -load of cement immediately and another

waggon-load a fortnight later. Rajangar (P.W.13) has sworn that accused got Ex.P4 written by him and P.W.2 h sworn that Ex. P4(a) is the submission note by accused. P.W.2 passed the order - Ex. P4(b) - to the effect that one waggon-load may be ordered, in spite of the fact tha Ex. P4 referred only to the balance of cement out of a recent supply and had omitted to say what the balance of cement in the stores was. It is, thus, clear that neither the actual stock on hand nor the book-balance w checked before passing this indent. An order for one waggon-load was sent to the suppliers (B. V. N. & Co.) as per Ext. P5 on 21-4-34. They arranged for despatch of the quantity direct from Shahabad to Mandya through Messrs. Dunt & Co. and sent the railway-receipt (Ex.P6) and the money (Rs. 455-10-0) required to pay the freigh to the Executive Engineer in an insured letter. Ex. P is the postal-receipt which shows that accused received that insured letter on 5-5-1934, though he had no authority to do so and though P.W.3 was the person authorised as per Ex. P56 to receive such letters. P.W. made the endorsement - Ex.P6(a) - in favour of accused authorising him to take delivery of the consignment. Ex. P6(b) which is the signature of the accused coupled with Ex. P10(a) which is his signature in the Goods Delivery Book of Mandya Railway Station prove that accus

and signed by accused with his daily receipt for having booked 440 bags to 'Salt' as shown on the back day. Ex. P17 and P1 are the railway receipts given by accused for those consignments. Ex. 17(a) and 1(a) are accused's endorsements thereon. A. D. L. Gohil (P.W.7), who is a temporary servant 11 years, produced with accused & Ex. P17 to the ex-clerk with the endorsement Ex. P1 and that he took delivery of the said consignment of 1 bags at Sarangpatan Ry. Station on 27-6-54 as per entr - Ex. P6(a) - in his Day Book. Purushottam, the Station master at Mahya at the time, has examined as P.W.23 before the committing Magistrate and his deposi has been marked as Ex. 1-1 in this Court, because his whereabouts are not known. His deposition shows the fact that accused took delivery of the said consig as per Ex. P16(a) on 27-6-54 and that he booked 120 bag and 69 bags respectively out of the said consignment on the same day to 'Salt' to Mahuvapatna and Ajdarli as p extn. P13, 14 & 17 and 15, 16 & 18. Ex.P19(a), in the Register of daily receipts (Ex.P19) and Ex.P20(a) in th consignment book (Ex.P20) are entried made by accused i his own hand on the last to transact on the said 440 bag these entries are not by themselves enough to prove tha all the 440 bags were originally put into the trucks. I are a few things which the consignor has to do by himself personally. The Executive Engineer (P.W.2) has not initialled these entries in token of having don o and he has passed the bill (Ex.P21) and signed the certificate (Ex. P22) in P.W.6's form No. 165 relying olely on the check-certificate - Ex.P21(a) - made by caused. The said bill has been paid to the State Treasury as per Ex. P21(c). The slip notes of accused xhs. P6(b), P7, P10a, P13a, P14a, P15a, 16a, 17a, 18a nd the handwriting of accused in Exhs. p11, 12, 13, 14,

15, 16, 19a, 20a and 21a have been identified by P.W.5 who was accompanied along with him during the entire period in addition to P.W.2. Mr. A. Subba Rao (P.W.10) who was cashier, has identified accused's writing and signatures in Exhs. P12 to 18. P.Jayaram (P.W.15) who was clerk accounts clerk since 8-2-34, has identified accused's signatures in Exhs. P7, 10(a), 11, 12, 13(a), 14(a), 15(a) 16(a), 17(a) and 18(a) and his writing in Exh. P6(b). He has also sworn that Exts. 19a, 20a are in accused's own writing. These materials establish that the said consignment of 440 bags received on 9-5-34 belonged to Government, that it was paid for by Government, that accused took delivery thereof on Monday 14. Vaidya on 9-5-1934 in his capacity as store-keeper of the Division, that he booked 120 bags in his own name to Seringapatam then and there and that he sold those 120 bags to P.W.7 as his own property the very next day i.e. 10-5-34. The entries entered as Exhs. P6(a) to P6(n) in the day book of P.W.7 prove that P.W.7 was paid for all the cement sold to him by accused.

12. Just a fortnight after receiving the consignment dealt with in the last paragraph, accused put up the memo (Ex.P2) on 25-5-34 in his own handwriting to the effect that out of the 440 bags of cement received on 9-5-34, there were only about 50 bags in stock, that the requirements of Nos. 1 and 2 Sub-Divisions worked up

was sent to the suppliers on 23-5-34 alone. Ex.P37 is the office-copy of the said order and Ex. P37a shows that the accountant (P.W.5) passed it without taking the objection that Surki-mortar should be used. According to Ex. P70(c), the correct balance of bags in the stores on 25-5-34 should have been 1084 bags. Thus, there was no checking by the Executive Engineer of the bags on hand or the accounts before an indent like Ex.P23 was sent on the basis of a memo like Ex.P2. 460 bags or23 tons were received under the R.R. (Ex. P25) and it was taken delivery of on 6-6-34. It is out of this consignment that accused is said to have misappropriated the 100 bags covered by the charge for which he is tried in this case. This requires detailed consideration. Another consignment of 460 bags was despatched by the suppliers under the R.R. (Ex.P41) on 9-6-34 and it was taken delivery of on 16-6-34. Accused is said to have misappropriated 224 bags out of this consignment. I think it better to deal with this latter consignment first.

13. The suppliers sent the R.R. (Ex.P41) for the latter consignment with the letter (Ex.P39) on 11-6-34. It was received in the Executive Engineer's Office on 12-6-34. P.W.2 made the note - Ex.P39(a) - that day asking accused to take delivery. Ex.P39b is accused's note to the effect that he has taken the R.R. (Ex.P41). Ex.P41a is the endorsement by P.W.2 in favour of accused. Ex.P41(c) is accused's signature in token of having taken delivery of the said 460 bags on 16-6-34. Ex. P41d is the note made by the Station Master (P.W.11) for having delivered the said consignment to accused. Ex.P40 and P40 a are post receipt and acknowledgment signed by accused for having received the insured letter in which Ex. P39 and the money (481-6-0) were received. Ex.P10c is

accused's signature in the goods delivery book of Mandya Ry. Station on 16-6-34 for having paid the said freight and for having taken delivery of the consignment. Exts. P43 and P44 are vouchers signed by accused and passed by P.W.2 for having paid unloading charges and carting charges for the said consignment. Ex. P38 is the bill for that consignment, 38a is the stock-certificate made by accused, 38b is the order passing it and the certifica (Ex.P45) in Form No. 163 A and 38 c show that the bill ha been paid through the Bank of Mysore. Ex. P78 is the certified extract of the account of the firm of suppliers with the Bank of Mysore showing this. Exts. P19c and 20 are entries made by accused in the Daily Receipts Register and measurement-book for the said 460 bags. Exts. P46 and P47 are consignment-form and risk-note filled in and signe by accused with his designation for having booked 224 bags 'self' to Mysore on 16-6-34 at Mandya Ry. Station soon af taking delivery as per Ex. P10c. The Station Master (P.W has sworn that those forms were filled and signed by accused in his presence, that accused left 224 bags in the same waggon viz., No. 10117, and that Ex.P48 is the R.R. written up by him viz., P.W.11, and handed over to accused for that consignment. P.W.11 has produced entries in the unloading and loading tally books marked as Exts. P75b and P76c in support of his evidence to the effect that the said 224 bags were sent on to Mysore in the same waggon viz., No. 10117 by No. 42 down train on the evening of 16-6-34 alone. Ex. P49b is the sub imprest sheet prepared by accused for having paid the unloading and carting charg on 16-6-34. M.C.H. Pathi (P.W.7) has sworn that accused made the endorsement - Ex.P48(a) - on the R.R. in his

on 18-6-34 as per entry - P65a - in the goods delivery-book. P.W.8 has sworn that the signature in Ex.P65a is his; that P.W.7 gave the R.R. and railway freight to him and that he gave them to ...e at the time of taking delivery. P.W.8 has said that he doesn't remember whether Ex. P48 is the R.R. He is a young man and being the son of the partner of P.W.7, he has taken delivery of things at the Ry. Station several times. Ex. P68 a to 68 n show that P.W.7 has paid for all the cement supplied by accused to him. The handwriting and signature of accused in the several entries referred to above have been identified by P.Ws. 9, 10 and 19 also. There is thus no doubt that accused took delivery of 460 bags on 18-6-34, in his capacity as store-keeper, that the said bags belonged to Government, that they were paid for by Government and that he booked 224 bags in his own name to Ayyam and sold them to P.W.7 immediately.

14. Coming now to the specific item included in the charge, we see that the R.R. (Ex.P25) for the first consignment ordered as per Ex.P23 was received on 5-6-34 with the letter (Ex.P24). Ex. P24a is the note made by the accountant (P.W.5) to the effect that the R.R. was given to the store-keeper (accused). Ex. P24 a is accused's note dated 5-6-34 to the effect that he has taken the R.R. Ex. P25a is the endorsement on the R.R. made by P.W.5 in favour of accused. Ex. P25b is accused's signature reading merely as 'R. K. Rao'. Ex. P26 is the acquittance insured-letter in which the railway freight of 18i-6-0 was received in respect of that consignment. Exs. P28a, 28b and 28c are postal receipts and acknowledgment signed by accused for having received in the post-office both the said letter and the registered letter in which Exhs. P24 and 25 were received. Ex. P19 b is the signature of accused

freight and taken delivery of the consignment on 6-6-34 Exts. P29 and 30 are vouchers prepared and signed by accused for having paid unloading and carting charges of that consignment. They have been passed by P.W.2. The Station Master (P.W.11) has sworn that accused took delivery as per Ex. 10b and that he signed it in his presence. Exts. P31 and 32 are consignment form and risk-note filled in and signed by accused with his designation as store-keeper for having booked 100 bags the same day (6-6-34) to 'self' o Mysore. P.W.11 has sworn that these forms were filled and signed by accuse in his office in the Ry. Station in his presence and th Ex. P33 is the railway receipt drawn up and given by hi to accused in respect of that consignment. P.W.11 has sworn that accused left 100 bags out of the said consig in waggon No. 12376, that Exts. P31, 32, and 33 relate t those 100 bags and that that were sent on to Mysore in said waggon the same evening viz., 6-6-34 by No. 42 dow He is corroborated by the entries marked as Exts. P75a P76a in the unloading and loading tally-books of Mandya Rv. Station. Ex. P19b and Ex. P20b are entries made by accused in the Daily Receipts Register and measureme book regarding the said consignment of 460 bags. Ex.P3 is the bill for the consignment. Ex. P36(a) is the sto certificate made by accused. Ex. P36(b) is P.W.2's or passing the said bill relying on Exts. P19b, 20b and 36 Ex. P37 the prescribed certificate in Form No. 163A signed by P.W.2 and attached to Ex. P36. Ex. P36c and Ex. 78 show that the said consignment has been paid for through the Bank of Mysore.

Md. Ibrahim has taken delivery of that consignment as per entry - Ex.P63a - in the goods delivery-book (Ex.P63) on 6-6-34, as sworn to by the goods-clerk (P.W.6) and corroborated by Md. Ibrahim (P.W.13). Ex. P64 is the weigh pass record relating to the said 100 bags. Ex.P58(e) is a letter dated 7-6-34 written by accused to P.W.12 to the effect that he has despatched 100 bags. Ex.P58 (f) is the postal-cover relating thereto. The address in Ex. P58(f) is in accused's handwriting in English, though Ex. P58(e) is in his Kannada writing and is signed as ' It is significant that Ex.P58(e) is in a printed letter-head belonging to accused. Ex.P58 shows that he had even a printed heading in Kannada for post-cards. Ex. P58 also is in his English letter-head. Ex.P58 series leave no room for doubt that they were all written by accused to P.W.12 on 15-5-34 in Kannada, (see p.34 is another letter written by accused) intimating him that he would be sending 100 bags shortly. Ex.P54a is the postal-cover for Ex.P54 and P.W.12's address is written by accused in English. Ex.P55 is the receipt granted by accused to P.W.12 on 7-6-34 for having received Rs. 280/- as the price of the said 100 bags despatched as per Ex. P53 after adjusting Re. 10 towards the railway freight which had been paid by P.W.12. Exts. P77a, 77b and 77c are entries in P.W.12's account-book for some moneys which accused had taken in advance from P.W.12. They have been adjusted on 10-9-34. There are thus overwhelming materials to show that accused was the person who took delivery of the 460 bags covered by Ex.25 on 6-6-34, that he took delivery as store-keeper, that the said consignment belonged to Government, that it was paid for by Government, that accused misappropriated 100 bags out of that consignment by booking those bags in his own name then and there to Mysore as per R.R. (P33) and that he sold

those 100 bags to P.W.12 the very next day at Mysore.

16. Accused has urged that he didn't take delivery that consignment, that the si nature in Ex.P25b is not his and that he had nothing to do with the 100 bags which are the subject-matter of the present charge. The fact that the signature in Ex. P25b runs as 'R. K. Rao' is of no significance, because the writing in it has been identified by P.Ws. 2, 5, 11, 18 and 19 and P.W.11 has sworn that it was put in his presence. The fact that it is an abbreviated signature may merely show a sneaky motive. The writing and signatures in Exts. P28a, b, P10b, 29 and 30, 31 and 32 and 33a have been identified by the said witnesses. P.W.2 was accused's officer and the other witnesses were co-workers in the same office. P.W.19 worked in the stores and had to handle every day accounts and other papers written by accused. Exts.P18a and P55 show that accused was not at all uniform in signi his name. Exts. P28 series have come from the post-offi and from P.W.8's father. It cannot be said that these official records and the records of the Ry. Stations have been got up for the purposes of this case. If we read Exts. P28, a, b and c, 24b, 28a, b and c, 10b, 19b, 20b, 29, 30, 31, 32, 33a, 34, 34a and 35 together and comparing accused's writing and signature in the other exhibits referred to in dealing with the other two consignments, the only conclusion is that the signature in Ex.P25b is also accused's, that he to delivery of the said consignment and that he dealt with 100 bags out of it in the manner indicated in the last paragraph. It has to be remembered that accused has admitted in his statement that he was generally taking delivery of the consignments of cement, and, that no doubt is thrown on his signatures found in most of the document that have been filed as exhibits in this case. Some doubt is thrown on the assertion of the Station Master(P.

to the effect that 100 bags were left in wagon No.12356 out of the same consignment. The surrounding circumstances clearly show that the bags formed part of the said consignment and he is sworn that he even calculated the weight on the basis of the entire consignment. There is no positive suggestion that the said 100 bags were carried to the Ry. Station independently of the consignment. If that had been done, the Station Master would certainly have come to know of it and the cartmen and the others who handled it could easily have been examined. Another point raised was that the witnesses who had signed the risk-note (Ex.P32) were not examined. Reliance on Acts, P14, 16 and 32 raises the suspicion that the signatures are of bogus persons and that accused must himself have put them.

17. In the face of all these materials, it cannot be urged even for a moment that accused handled the 100 bags in question in an innocent way. As pointed out on pages 336, 338 and 339 in 35 M.C.C.R. 319, the other acts about which evidence had been tendered in the case are proximate in time ~~xxx~~ to that covered by the charge and they are of the same kind as that in question. They can be used for drawing inferences about the dishonest intention of the accused, though they have to be excluded from consideration as affording proof of the subject of the trial. All the three acts considered together show that they were done by accused in a systematic ~~pxrxmit~~ course of conduct of the same kind and in a systematic pursuit of the same criminal object viz., to misappropriate large quantities of cement out of the consignments ordered from the suppliers

18. One question naturally arises in a case

like this and that is whether the whole thing could be a secret affair known only to the accused or whe other persons in the office should also have been in the know. The way in which accused was allowed to receive insured letters containing the freight amount the continued laxity in the matter of seeing that the consignments received by him were physically put in t stores, the fact that the A. Form Register was not pe up for months together, for instance from 30-6-34 up 27-9-34, as sworn to by P.W.15, the circumstance that Rajiengar (P.W.19), who was the stores accounts clerk never brought such defects in the stores-accounts to the notice of the officer, the fact that he was a dis relative of the Executive Engineer (P.W.2) on his wif side and the fact that P.W.2 rarely visited the store and counted the stock seem to me to indicate that the defalcations were not entirely a secret affair and th most people in the Division knew about it. P.W.19 w working in the stores and it is difficult to explain how he kept quiet when quantities much smaller than consignment were brought and put into the stores. Th facilities provided by the Station Masters for bookin large quantities out of such consignments then and th in the My. Station and for despatching them almost by the same train by which they arrived, in spite of fact that Government cement was being handled in that man or, show that the Railway officials too must have bought in. Otherwise, it is impossible for such thi to go on systematically for such a long time in a sma station like Mandya."

mentality of accused was largely responsible for the offence. We have also to ... that accused has been in custody for nearly 10 months by now. accordingly sentence accused to suffer rigorous imprison ment for one year and to pay a fine of Rs. 400. In efault of the payment of the fine, accused will suffer further rigorous imprisonment for 4 months.

Dictated to steno-typist and pronounced in open Court.

Sd/- S. Krishna Murti,
Additional Asst. Sessions

13-1-1936.

mop 7/1/36

SUBORDINATE & ASST. SESSIONS JUDGE'S COURT * ADDL. MYSORE.

723 P 35

102

POLICE DEPARTMENT.

OFFICE OF THE
INSPECTOR-GENERAL OF POLICE IN MYSORE,

When replying please quote No. C.2.275 34-35 Encl. one

Dated Bangalore, the 30th January 193 6.

FROM

F. A. HAMILTON, ESQ., C.I.E.,
Inspector-General of Police in Mysore,
Bangalore.

To

CHIEF SECRETARY'S
31 JAN. 1936

A.V.Ramanathan,Esq., B.A.,
Chief Secretary to the Government of Mysore,
Bangalore.

SIR,

In continuation of my letter No.C.2.275/34-35 dated 15-1-1936 regarding th Mandya Cement Defalcation Case, I have the honor to state that the 1st accused Krishna Rao was convicted of the 1st charge under Section 409 I.P.C., at the retu and sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.400/- or in default to under rigosous imprisonment for a further period of 4 months.

Charges have been framed against the accused in respect of the 2nd charge of forgery and the case is posted to 28-1-1936.

Copy of letter dated 23-1-1936 received from the District Superintendent Police, French Rocks in the matter is enclosed.

I have the honor to be,
Sir,
Your most obedient servant,

INSPECTOR GENERAL OF POLICE.

Letter dated the 23rd January, 1936 from the District Superintendent of Police, French Rocks.

In continuation of my letter No.B1.16/34-35 dated 11-~~11~~-1936 reporting the progress in the retrial of A1.Krishna Rao, accused in the Mandya Cement Case, I have the honor to state that the judgment was pronounced by the Additional Sessions Judge, Mysore, convicting the accused under Section 409 I.P.C. and sentencing him to undergo Rigorous imprisonment for one year and to pay a fine of Rs.400/- in default to undergo rigorous imprisonment for 4 months.

The second charge of forgery which was posted to 15-1-1936 was adjourned to 16-1-1936 for nonserving of summons to assessors. On 16-1-1936 the following charges were framed against him:-

1. Criminal Breach of Trust in respect of 200 bags of cement received on 28-1-1934.
2. The alternative charge under Section 381 I.P.C. in respect of the bags noted above.
3. Criminal Breach of trust in respect of 200 bags of cement received on 19-2-1934.
4. The alternative charge under Section 381 I.P.C. in respect of the bags noted above.
5. Charge of forgery under Section 467 I.P.C.
6. Abetment of forgery under Section 467/109 I.P.C.
7. Charge of using a forged document under Section 471 I.P.C.

The accused pleaded not guilty to the charges framed against him and the trial began. Thirteen prosecution witnesses have so far been examined and and the case is posted to 28-1-1936.

Further progress will be duly reported.

COPY

Inspector General of Police.

4379 P 35

104

POLICE DEPARTMENT.

PHONE No. 298

OFFICE OF THE
INSPECTOR-GENERAL OF POLICE IN MYSORE,

When replying please quote No. C2-275/34-35 one

Dated Bangalore, 13th January *193*6

FROM

F. A. HAMILTON, ESQ., C.I.E.,
Inspector-General of Police in Mysore,
Bangalore.

CHIEF SECRETARY. Law 16 JAN. 1936

To

A.V.Ramanathan,Esq., B.A.,
Chief Secretary to the Government of
Mysore, Bangalore.

SIR,

In continuation of my letter No.C2-275/34-35 dated 18-11-35 regarding the case of misappropriation of cement in the Engineer's Office at Mandya, I have the honour to state that the District Superintendent of Police, French Rocks, reports that the retrial of the accused person was taken up from 2-1-36 day to day and arguments were heard on 9-1-36 after recording the statement of the accused. The case was posted to 13-1-36 for judgment.

2. A copy of the report dated 10-1-36 received from the District Superintendent of Police, is herein, enclosed for the information of Government.

I have the honour to be,
Sir,
Your most obedient servant,

Inspector General of Police.

Letter No. B1, 16/34-35 dated the 10th January 1935 from the District Superintendent of Police, French Rocks, to the Inspector General of Police in Mysore, Bangalore.

In continuation of my letter No. B1-16/34-35 dated 24-11-1935 reporting that the retrial of Accused No.1 Krishna Rao in the Mandya Cement Case is ordered and that the retrial is likely to be taken up by the Additional Assistant Sessions Judge, Mysore, from the 2nd January 1936 etc., I have the honor to further report for kind information that the case was taken on the 2nd January 1936 and pushed through day to day with expedition.

Mr. K.Ramaswamy, Public Prosecutor, Mysore Division, who is conducting the prosecution assisted by Mr. H.M.Nurulla, investigating Officer of the case, submitted to the Court at the opening that, there would be five separate charges as under against the accused and they will have to be taken up separately.

Charges:- 1. Criminal Breach of trust : under Section 409 I.P.C. relating to 100 bags of cement booked at Mandya on 6-6-1934.

2. Forgery : under Section 467 I.P.C. committed on 8/11th December 1933 combined with two acts of criminal breach of trust or theft committed on 28-1-1934 and 19-2-1934.

3,4 & 5. Falsification of Accounts : under Section 477 (a) I.P.C. committed in respect of Daily Register of receipt and stock, measurement Book etc. ...

The retrial commenced on 2nd January and charge No. 1 under Section 409 I.P.C., was taken up. The accused pleaded not guilty. The hearing was taken up day to day, Messrs. Hussain Ali Saheb, Mohanswami Mudaliar and Narasimha selected as Assessors.

Nineteen witnesses in all were examined day to day for the prosecution till the evening of 8th January 1936 and the case posted to 9-1-1936 for recording the statement of the accused and for hearing arguments.

On 9-1-1936, the statement of the accused was recorded and arguments heard. The accused denied the charge and the Assessors gave a verdict that the accused has been guilty of an offence under Section 409 I.P.C.

The case was posted to 13-1-1936 for judgment

The trial on the 2nd charge of Forgery is posted to 15-1-1936 and witnesses have been summoned accordingly.

Further progress of these trials will be duly reported.

For Inspector General of Police.

5314 P 35

POLICE DEPARTMENT.

(07)

Tel. Address :
"POLICE"
PHONE No. 298

OFFICE OF THE
INSPECTOR-GENERAL OF POLICE IN MYSORE,

When replying please quote No. C2-275/35-36

Dated Bangalore. 25th February 193 6.

FROM

F. A. HAMILTON, ESQ., C.I.E.,
Inspector-General of Police in Mysore,
Bangalore.

To

A.V.Ramanathan,Esq., B.A.,
Chief Secretary to the Government of Mysore,
Bangalore.

CHIEF SECRETARY'S
Law
26 FEB. 1936

SIR, 26/2

In continuation of my letter No.C2-275/34 dated 31-1-36 re. the Mandya cement case, I have the honour to state that in the second trial the accused was acquitted of the offence of forgery bu was convicted under Sections 381 or 409 I.P.C. in the alternative under two counts for two acts charged and sentenced to suffer R.I. for 18 months and to pay a fine of Rs.500/- on each of the counts, the sentences to run consecutively. Including the sentence in the previous trial the accused in the aggregate got four years R.I.and to pay a fine of Rs.1,400/-.

The trial for falsification of accounts is pending and consists of 3 counts of charges.

I have the honour to be,
Sir,
Your most obedient servant,

Inspector General of Police.

Subject for perusal
TSD 27/2. 27/2

These papers may be sent to the Police Section.
Such reports are being received in the Law Section
by the Govt Mysore. They may all be in one
place hereafter
TSD 28/2 28/2

G.O. No. 863 S. 2-36.

487/P38

Office of the Public Prosecutor
Mysore Division, Mysore.
5th Feb 1936

From

The Public Prosecutor
Mysore Division, Mysore.

To

The General Secretary
The Govt of His Highness the Maharaja
Bangalore.

GENERAL SECRETARIAT
6 FEB. 1936

Sir

I have the honour to report that the Additional Assistant Sessions Judge, Mysore has given judgment in S.C. No. 2 of 35-36 (Government Vs R. Krishna Rao). This is the second case of retrial in the Mandya Cement Defalcation Series copy of judgment will be submitted in due course

The prisoner stood charged with three offences, namely:-

1. Forgery (467) or abetment of forgery (467/109) using a forged document (471)
2. Criminal breach of Trust (409) or theft (381) in respect of 200 bags of Cement committed on 28-1-
3. Criminal breach of Trust (409) or Theft (38 committed on 19-2-34.

In S.C. No. 8 of 34-35 on the file of the Assistant Sessions Judge, the accused had been charged for the same three offences and some other offences. On the charge of forgery he was acquitted. In the appeal

against Conviction the Sessions Judge held that the whole trial was Vitated by Misjoinder of Charges and ordered a retrial on all the counts of Charges Dining the trial the Additional Assistant Sessions Judge has held that forgery is completely proved. But he has Wrongly opined that the order of the Sessions Judge directing retrial of the accused for forgery was wrong and the subsequent trial for that offence was barred by Sec 403 Cr. P. Code.

In my opinion the View taken by the Additional Assistant Sessions Judge is erroneous The following decisions show that his reasoning is fallacious The point answered is not covered by any decision of the Hon'ble High Court although it is Settled law in British India that an appellate court can order retrial for an offence of which the accused has been acquitted by the Lower Court

I have therefore to request that the Government may be pleased to direct that a Revision Petition may be filed before the High Court and a final decision obtained on the point raised by the Additional Assistant Sessions Judge in the present case

I have the honour to be
Sir
Your most obedient Servt

A Ramachandra Reddy
Public Prosecutor.

* 22 Cal 377
40 Cal 163
23 Cal. 975
34 Mad 545
35 Mad 243
37 Mad 119
AIR 1933 All 941
AIR 1927 Pat 13

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat 110

Dated, Bangalore, 7th February ~~193~~ 1936

No. PS 262
Law 205-34

From

The *General Secretary to the Government of His Highness the Maharaja of Mysore.*

To

The Public Prosecutor,

Mysore.

Sir,

With reference to your letter No.863 dated 5th February 1936 intimating that the Additional Assistant Sessions Judge has delivered judgment in S.C.2/35-36 (Government Vs R. Krishna Rao), and suggesting that a revision petition may be filed in the High Court against the order passed refusing to retry the accused for forgery, I am directed to request you to immediately send a copy of the order which you wish to be revised so that the matter may be considered and order of Government obtained.

I have the honor to be,
Sir,
Your most obedient servant,

For General Secretary to Govt.

Appendix F G—1]

SUBJECT.....

.....

.....

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the *193*

Date of issue 7/2/36

Signed by Mr. N. R. J. R

Section Law

File No. 105-36

Serial No.

No. PS 262

To

The Sec. Mysore

Sir

With reference to yr
letter no. 863 d 5.2.36 intimating
that the Addl. Asst. Sessions Judge has
delivered judgment in S.C. 1936/36
(R. Krishna Rao) convicting
on a revision petition in
the H.C. against the
order refusing to retain the charge of forgery
for perusal,
I am directed to request you to
send the Copy of the
order which you wish
Sessions Judge to be revised by
the matter being considered
orders of Govt obtained.

I have etc

1935-36.

From

The Public Prosecutor,
Mysore Division,
M y s o r e.

To
The General Secretary
to the Government of His Highness
the Maharaja of Mysore,
Law Section,
B a n g a l o r e.

Dated 7th February 1936.

Despatched

Received 8/2/36

General No.

No.

Enclosure No. 1 (Copy of Judgment)

GENERAL SECRETARIAT
8 FEB. 1936

Sir,

I have the honour to submit for the information of Government a certified copy of judgment passed by the Additional Assistant Sessions Judge, Mysore, in Sessions Case No. 2 of 1935-36 (Government Vs. R.Krishna Rao

I have the honour to be,
S i r,
Your most obedient servant,

PUBLIC PROSECUTOR.

IN THE COURT OF THE ADL. ASSISTANT SESSIONS JUDGE,
MYSORE.

Dated: This 4th day of February 1936.

Present: S. Krishna Murti, Esq., B.A., LL.B.,
Additional Asst. Sessions Judge.

Sessions Case No. 2/1935-36.

Complainant:	Accused:
Government of Mysore.	R. Krishna Rao.

Judgment.

1. This accused, who was store-keeper in the office of the Executive Engineer, No. 5 I[illegible] in Canal Division at Mandya and M. Singriengar, who was accountant or manager of that office, were committed to sessions by the Special First Class Magistrate of Mandya on several charges of criminal breach of trust, falsification of accounts, forgery and abetment. The charges framed by the Committing Magistrate against this accused were (i) for an offence under Sec. 467 I.P.C. in respect of an alleged forgery committed by him on 11-12-1933; (ii) one charge of criminal breach of trust under Sec. 409 I.P.C. said to have been committed by him on 28-1-1934 in respect of 200 bags of cement and (iii) one charge under Sec. 477 (A) I.P.C. of having made false entries in several registers on or about the 11th December 1933 and 28-1-1934. The other accused (M. Singriengar) was committed on a charge of abetment in respect of the offence of criminal breach of trust said to have been committed by this accused on 28-1-1934 in respect of 200 bags of cement.

2. Both the said accused were tried together for all the said charges by the Assistant Sessions Judge, Mysore, in Sessions Case No. 8 of 1934-35 Two charges of criminal breach of trust were added this accused by the Assistant Sessions Judge. One was for criminal breach of trust in respect of 200 bags said to have been misappropriated on 19-2-1934 and the other was in respect of 100 bags said to ha been misappropriated on 6-6-1934 Two charges of abetment of the said offences were [illegible] the other accused also in respect of the fresh charg referred to above. This accused was convicted of all the charges except that under Sec. 467 I.P.C. and the other accused was acquitted under all the charges. On appeal, the Sessions Judge held in Mysore Criminal Appeal No. 40/35-36 that the said trial was bad on account of misjoinder, set aside the conviction and ordered retrial with the direct that separate trials should be held for disti offences which cannot be clubbed together and misjoinder should be avoided The appellate judgment also contains observations to the effect that the acquittal of this accused in respect of the offence of forgery (467 I.P.C.) has no legal effect, because the trial itself was illegal and that this accused should be tried again for that offence.

3. The case was subsequently transferred to this Court and was registered as Sessions Case No. 1 of 1935-36. In pursuance of the direction of the Appellate Court, an order was passed in Sessions Case No. 1 on 2-1-1936 to the effect that there will have to be five separate trials, that

trial No. 1 will be in respect of the charge under Sec. 409 I.P.C. for the offence said to have been comitted on 6-6-1934, that trial No. 2 will be in respect of the offence under Sec. 467 I.P.C. said to have been committed on 11-12-1933, combined with the two charges for criminal breach of trust (or theft) said to have been committed on 28-1-1934 and 19-2-1934 and that trials Nos. 3, 4 and 5 will be in respect of false entries and falsification of accounts said to have been made on different dates in different registers and books relating to the divisional stores. Sessions Case No proceeded with only the trial No. 1 referred to above. The present case is trial No. 2 referred to above.

4. When the case came up for hearing on 15-1-1936, the Public Prosecutor filed an application under Sec.227, Criminal Procedure Code, praying that two alternative charges of theft may also be framed, as directed by the Appellate Court, in respect of the two charges of criminal breach of trust which are the subject-matter of this case and that on the evidence recorded before the comitting Magistrate charges under Sections 467 read with 109 I.P.C. (abetment of forgery) and under Sec. 471, I.P.C. (using as genuine a forged document) may also be framed in the alternative along with the charge of forgery (Sec. 467 I.P.C.). These four alternatives charges were framed on 16-1-1936. Thus, the present trial is in respect of seven charges which are generally alternative in character. Accused has pleaded not guilty to them all. Accused's Counsel has also filed an application pointing out that the acquittal in respect of the offence of forgery (467 I.P.C.) in the previous trial is a bar to a fresh trial on the same facts under Sec. 403, Criminal Procedure Code and that the principle

of autre fois acquit applies.

5. The facts relied on by the prosecution, so far as this trial is concerned, are briefly these:-- Accused was store-keeper in the office of the executive Engineer, No. 5 Irwin Canal Division at Mandya since about the middle of July 1932 till he was arrested on 23-9-1934. Large quantities of Char Minar cement were being ordered and got from Sahabad in the Nizam's Dominions through Messrs Narayanswami & Co, Bangalore for the use of the works in the said Division. Considerable portions of the cement so got were being misappropriated and this fact came to light by means of an anonymous letter addressed to the Chief Engineer in the middle of September 1934. After the said letter was placed in the hands of the Executive Engineer of the Division on 18-9-1934, he counted the number of bags actually found in the stores on 22-9-1934, got the accounts checked and found out shortage of 1337 bags. He gave a complaint to the Police against this accused on 23-9-1934, got him arrested and arranged for a special audit in respect of cement, after reporting the matter to the Chief Engineer and the Comptroller. The result of the special audit was that shortage or defalcation to the extent of 1337 bags was traced after scrutinising the accounts for the whole period of accused's store-keepership. In the course of their investigation into the series of defalcations, the Police found out that, in addition to misappropriating, from time to time, cement received under genuine orders placed by the Executive Engineer with the firm of suppliers, this accused had sent a bags or forged indent on 8/11-12-1933 for 60 tons

of cement to be supplied at the intervals specified therein.

The first consignment of 22 tons or 440 bags under that bogus indent arrived at Mandya on 24-12-1933. Accused took delivery of the said consignment on the said date and put it into the stores to make up the enormous shortage and to get over the half-yearly counting.

The second consignment of 200 bags (10 tons) under that bogus indent arrived at Mandya on 28-1-1934. Accused took delivery of the same on that day. But instead of carting the same to the stores, he booked that consignment then and there to Mysore in his own name and sold it to Hakim Mahomed Gouse, a hardware merchant in Mysore, forthwith. Hakim Mahomed Gouse himself took delivery of the consignment on the basis of the railway-receipt handed over to him by accused.

The third consignment of 200 bags under that bogus indent arrived at Mandya on 19-2-1934. Accused took delivery of that consignment also. But instead of carting it to the stores, he booked it in his own name to Mysore then and there and sold to the same Hakim Mahomed Gouse forthwith. Hakim Mahomed Gouse himself took delivery of the consignment on the basis of the railway-receipt handed over to him by accused.

The case for the prosecution is that the said that accused has either himself forged the it or got it forged to suit his purposes and

used it as a genuine indent. knowing it to be forged and that he has also committed either breach of trust or theft in his capacity as store-keeper of the Division in respect of the two consignments of 200 bags each received on 28-1-1934 and 19-2-1934.

7. The anonymous letter, which exposed the fraud that was being perpetrated in the stores is produced as Exhibit P78 and Mr. C. T. N. Iyengar (P.W.20), who is the Executive Engineer in charge of the Division since 26-3-1934, has told us that the Deputy Chief Engineer placed Ex. P78 in his hands on 18-9-1934, that he (P.W.20) paid a surprise visit to the stores on 22-9-1934 and found only 398 bags of cement therein, that on investigation he found a shortage of 1335 bags, that he gave the complaint (Ex. P69) to the Police Inspector next day (23-9-1934) and that he also reported the matter to the Chief Engineer for arranging for a special audit. The special audit was conducted by Mr. S. Govinda Rao (P.W.22) under the supervision of Mr. V. T. Sreenivasan (P.W.21), the Assistant Comptroller, who was in charge of the section to which the audit of No. 5 Irwin Canal Division at Mandya was attached. The special audit related to the period from 1-7-1932 to 30-9-1934 so as to cover the whole of the period of accused's store-keepership. Ex. P70 appears to be a statement prepared in the course of that audit, because it shows the shortage as 1337 bags mentioned by P.Ws. 21 and 22 and not 1335 bags as stated in Ex. P69. According to Ex. P70 and the depositions of Mr. Sharma (P.W.12), A. Subba Rao (P.W.17), Rajiengar (P.W.18) and Mr. C.T.N. Iyenga (P.W.20), shortage, as indicated below, existed on the following dates:--(i) The correct balance of bags in the stores

915. But P.W.12, who counted the actual quantity on hand in accused's presence on that day as per Ex. P60(a), found only 475 bags. That even this figure '475' included the 440 bags received as the first consignment under the alleged bogus indent on 24-12-1933 but not entered in the store accounts is a point which will be discussed in detail later on. If we exclude these 440 bags, the real balance in the stores on 31-12-1933 was only 35 bags. (ii) The correct balance on 30-6-1934 should have been 2234 bags. But Ex. P77(a) showed it only as 1300 and odd bags. (iii) The correct balance on 3-9-1934, the date on which Mr. C. T. N. Iyengar (P.W.20) purports to have done the counting, was 1861 bags. But P.W.20 says that he actually found only 793 bags; and (iv) the correct balance on 22-9-1934 should have been 1735 bags as already stated. But P.W.20, who gave a surprise visit to the stores that day, found only 398 bags. It is, therefore, clear that defalcations were going on on a large scale for a long time prior to 18-9-1934 and that the real balance of cement on hand in the stores at the close of the half year ending 31-12-1933 was only 35 bags, while it should have been 915.

8. The manner in which the previous defalcations were carried out is not material for the purposes of this case. But a glance at some events that took place in December 1933, will reveal the fact that matters relating to cement had worked themselves up to a pitch by about the beginning of that month and that the necessity to replenish the stores as far as possible by getting as large a consignment of cement as possible was also keenly felt by the person responsible for the defalcations. We gather from the depositions of Mr. N. S. Gopaliah (P.W.1), who is a clerk in the bills

section in the Mysore Bank at Bangalore and Mr. K. R. Sreenivasan (P.W.9) of Messrs. B. V. N. & Co. that the five bills of October and November 1933 shown in the entries marked as Exhibits D1 to D4 in the Bills Register (Ex. P1) of the Mysore Bank remained unpaid on 8/11-12-1933 which is the date on which the alleged bogus indent (Ex. P51) for 60 tons was sent to the firm of suppliers. P.W.1 has sworn that a sum of Rs. 1376/- was paid by one K. Krishna Rao personally to the account of the firm of suppliers in the Bank of Mysore at Bangalore on 4-12-1933 unde the challan (Ex. P7) and that this payment was towards two other bills of July 1933 which were overdue. Thus, there were altogether six bills which remained unpaid in the beginning of December. The person making the payment has signed on the reverse of Ex.P7 as K. Krishna Rao and Mr. N. Subba Rao (P.W.14) has identified that signature as accused's. The Bank Clerk (P.W.1) has said that he cannot identify accused. This must have been due to the fact that accused had gone to him only once and that on the day of Ex. P7. Mr. C. T. N. Iyengar (P.W.20) has sworn that the receipt (Ex. P8) granted by P.W.1 for that payment was found among accused's papers and that it was handed over to the Police. It is also significant that there is no entry in the Cash Book Ex. P71 of the Division for the payment of the said sum of Rs. 1376/-. It is, therefore, clear that accused himself must have run up to Bangalore, when pressure was put in respect of those six bills and paid the said sum of Rs. 1376/- from private funds, in order to allay the suspicion of the suppliers and to make it possible for getting a substantial consignment from

has told us that accused had gone to him once when a bill had been sent for interest on bills overdue from the Executive Engineer of Mandya. All this indicates that accused must have had recourse to underhand methods for getting many consignments prior to December 1933 also. We have also to remember that no other person named R. Krishna Rao was interested in going all the way to Bangalore and paying such a heavy sum as Rs. 1376/- in the name of the Executive Engineer to the account of the firm of suppliers.

9. On returning to Mandya after paying the said sum, accused has lost no time in putting up a typed acknowledgment like Ex. P9 on 8-12-1933 addressed to the Bank of Mysore in respect of the receipt (Ex. P8), though it is a receipt which he, (viz. accused) had personally brought from Bangalore and though such an acknowledgment seems to have been unnecessary. Ex. P51 purports to be only a copy of Ex. P9 sent to the firm of suppliers for information. Ex. P63 purports to be the office-copy of Ex. P51. All these three Exhibits bear the full signature of the Executive Engineer, Mr. N. Subba Rao (P.W.14). Accused has used these Exhibits for the purpose of inserting or forging an order for 60 tons of cement and has specified the time within which different quantities had to be supplied. It is patent from Ex. P9 that the words "The other bills will also be despatched as early as possible" marked as Ex. P9(a) must have been added after Mr. Subba Rao's signature, because they are impressions of a new ribbon. The responsibility for Ex. P9 is accused's, because he has put the initial --Ex. P9(c)--on 8-12-1933 for obtaining the officer's signature. The Number of the 'To' Register (No. 1038 / 11-12-1933) marked as Ex. P9(b) has also been put by accused himself. Turning to

Ex. P63, we find that the typed portion--Ex.P63(d)- is a bright carbon-paper impression added after the officer's signature and that the words "Please acknowledge receipt of this communication" have been further added to that typed portion in accused's writing. The figures 12 or 15 in the third line of Ex. P63(d) have also been changed to 10 and 12 in accused's writing. The whole of Ex. P63(d) has been squeezed in in the limited space that was avilable above Mr. Subba Rao's signature. Ex. P51(a has evidently been typed after Ex. P63(d), because even the manuscript portion of Ex. P63(d) has been typed in Ex. P51(a) and the figures 10 or 12 in the third line have also been typed. Ex. P51(a) is also the impression of a new ribbon, it is scqueezed in in the limited space about Mr. Subba Rao's signature and two lines have even gone below the signature on the left hand side. The words "To Mandya " have been added in manuscript by accused in Ex. P51(a). The bright violet ink impressions in Exts. P9(a), 51(a) and 63(d) are the impressions of the same ribbon and they have all been added after the officer's signature to suit accused's scheme of placing an illegitimate order for 60 tons of cement for his own purpose The responsibility for Exts. P51 and 63 is also entirely accused s. He has initialled Ex. P51 as per Ex. P[illegible] on 8-12-193[illegible] and has also put the 'To' Register Number (No. 1039 11-12-193[illegible] marked as Ex. P51(c). He has put the letters 'o.c.' on Ex. P63 and initialled under them as per Ex. P63(c to indicate that Ex. P63 is the office-copy. Exts. P9, 51 and 63 do not at all bear the initials either of the manager or the head-clerk to show that they passed through their hands in the course of office

routine. Such routine has been scrupulously avoided in respect of these exhibits and even the despatching appears to have been done by accused himself after tampering with the entries in the 'To' Register (Ex.158) S. Krishnamachar (P.W.11), who was the despatching clerk on 11-12-1933 and Mr. R. A. Krishna Iyer (P.W.16), who was the head-clerk, have sworn that the entries marked as Ex. P58(a) and P58(c) in the 'To' Register are also interpolations made by accused in respect of Exts. P9 and P51. The writing and initials of accused in the several Exhibits referred to above have also been identified by Krishnamachar (P.W.11), typist G. R. Krishnaswami (P.W.15), Mr. R. A. Krishna Iyengar (P.W.16), Mr. A. Subba Rao (P.W.17), Rajagopal (P.W.18), Mr. Singriengar (P.W.19) and Mr. D.T. Narasimha Iyengar (P.W.20). All these witnesses had ample opportunities of seeing accused's handwriting and signature in the course of office work for a long time.

10. There can, thus, be no doubt about the fact that accused is responsible for the insertion of words amounting to an order for 60 tons of cement in Exts. P51 and 63 after the signature of Mr. A. Subba Rao (P.W.14), that P.W.14 did not at all know of the said order and that Ex. P51 is a forged order or bogus indent placed in his name. The usual procedure of putting up a memo like Ex. P57 after calling for requirements from the sub-divisions and ascertaining the balance of cement on hand in the storage was not at all followed in respect of Ex. P51, though the quantity of cement ordered under it was perhaps the largest ever indented for under a single indent. This too strengthens the forged nature of the said indent. It is admitted by P.Ws. 11, 14 and 15 that accused does not know typing at all. The typist (P.W.15) was also

an accused before the Committing Magistrate. It is likely that he was also taken into confidence and that all the necessary typing was done by him. There is the handwriting of accused himself in Ex. P63(d) and in Ex. P51(a). Accused has evidently despatched Ex. P51 as a genuine order, knowing fully well that it was a forged one. The question whether on these fac accused can be convicted now of any of the three charges relating to forgery will be taken up again after the plea of autre fois acquit is disposed of. The action taken by the firm of suppliers on the basis of Ex. P51 and the manner in which the consignments despatched by them in response to Ex. P51 were dealt with by accused are matters of evidence relating to the other alternative charges of criminal breach oftrust or theft for which accused is tried in this case. They will be dealt with now.

11. The firm of suppliers took Ex. P51 to be a genuine order placed by the Executive Engineer and duly acknowledged the same on 12-12-1933 alone as per Ex. P52. The first consignment of 22 tons or 440 bags was despatched from Shahabad on 16-12-1933 to the address of the Executive Engineer under the R.R. Ex. P16. Ex. P53 is the covering letter with which the said R.R. was sent by Insured Post to the Executive Engineer together with Rs. 458-10-0 for paying the freight. Ex. P11 is the postal acknowledgment signed by Mr. N. Subba Rao (P W.14) for having taken delivery of that insured-letter. Ex. P16(b) is P.W.14's endorsement on the R.R. in favour of accused. Ex.P16a is accused's signature on the R.R. put at the time of surrendering it to the Station Master (P.W.4), when taking delivery of the consignment on 24-12-1933 Ex. P54 is the receipt sent to the firm for the

freight amount (Rs. 458/10/-) so received. The said amount was credited to the treasury, as stated by P.W.14 and P.W.14 passed the memo (Ex. P56) on 21-12-1933 directing the Assistant Engineer (P.W.10) to pay the freight amount to accused out of his imprest. P.W.10 has sworn that he paid that sum to accused on 24-12-1933. Ex. P29(a), which is the entry in the Goods Delivery Book of Mandya Railway Station, is signed by accused and it shows that accused took delivery ofthe consignment on 24-12-1933. Accused has not denied having taken delivery of this consignment.

12. The entry--Ex. P62(a)--in the Daily Receipts Register is in accused's writing and it shows the said 440 bags as received on 24-12-1933. The said entry has been made in January, because the accounts for December were closed on 23-12-1933 in connection with the half-yearly counting or stock-taking. Ex.P61a is the entry in the measurement-book made by accused relating to that consignment. It is signed by P.W.14 . Ex. P2 is the bill relating to that consignment. Ex.P2c is the stock-certificate made thereon by accused and Ex. P2(e) is the pass order made by the accountant and signed by P.W.14. This bill has been paid on 31-1-1934, as sworn to by P.W.1. It must be remembered that the said 440 bags should have been physically put into the stores on 24-12-1933 alone, because they could not be kept elsewhere, though the entry in the store accounts could be made only in January. Thus, the actual balance of 475 bags found in the stores on 31-12-1933, when Mr. Sharma (P.W.12) did the half-yearly counting as per Ex. P60(a), included the said 440 bags. Hence, we have to exclude those 440 bags from the half-yearly counting and take only 35 bags as the real balance on

hand in the stores on 31-12-1933. This accounts for the hurry with which accused took steps from the first week of December 1933 to make up the deficiency in the stores, which were practically deplete of all cement. It is rather strange that Mr. N. Subba Rao handled Exts P11, 16, 53 and the money and passed also a memo like Ex. 56 without even recollecting that he had not placed an order fo such a large quantity of cement. This only sh the degree of confidence which accused had earned from P.W.14 by long service under him and the extent to which accused was allowed a free hand in all matters relating to cement. It has already been pointed out that P.W.14 did not insist on offi routine before signing Exts P9, 51 and 63. I thi that the fault lay in allowing accused to follow Mr. N. Subba Rao wherever he went since 1927. It i no wonder then that accused was able to put through an indent like Ex. P51 and to obtain large quantiti of cement under it, at the cost of Government.

13. The second consignment of 200 bags under the indent (Ex. P51) was booked at Bangalore by the firm of suppliers on 27-1-1934 from the stock in th own godowns and Ex. P17 is the R.R. relating to it. The consignment arrived at Mandya on 28-1-1934 by 4 Down in Waggon No. 712. This Number is mentioned

by A. Subba Rao (P.W.17) is do ed 29-1-1934. The Station Master (P.W.4) has sworn that o delivered the consignment on 29-1-1934 without got ng the R.R. Ex. P17. because it was a Sunday and he same accused promised t bring the R.R. the next day. Mysore is nothing str nge in this except that P.W.4 was willing to allow accused. P.W.4 has sworn that accused booked the said 200 bags then and there to Mysore in h own name under the R.R. Ex. P26. Ex. P18 is the consignment-note relating to Ex. P26 bearing the date 2 -1-1934 and signed by accused. Ex. P19 is the ris note signed by accused as Krishna Rao with his desi ation. The entry--Ex.P30a-- in the Loading Tally Book sho s that the said consignment was left in the same wag on (No. 712) on 28-1-1934 and that it left for Mysore b 42 Down on 29-1-1934. that Ex. P31(a) further shows that the unloading was at 16 hours and that the load g was at 17 hours. Ex.P32b shows that the only other con ign ent of cement received at Mandya on 28-1-1934 was 2(bags addressed t consignment merchant and that it was deli ered only on 1-2-1934 as per Ex. P29b. Ex. P34a in the Goods Delivery Book of Mysore Railway Station shows that th consignment booked as per Ex. P26 arrived in My ore on 30-1-1934 by the same wagon (No. 712). Ex. 35a is the entry in the Vehicle Register of Mysore . Station and Ex. P36(a) is the entry in the Unloadin Tally Book showing the fact that the said consignment arrived in wagon No. 712

to his shop and that P.W.6 did so. Ex. P47 is a post-card written by accused to P.W.8 on 30-1-1934 about the said consignment. The post-card contains accused address in print. Exts. P64 and 65 are false receipt prepared by accused for unloading and carting charges in respect of the consignment covered by Ex. P17. They have been produced by accused before P.W.14 and he has cancelled and initialled them. Ex. P68a is the false entry in the Daily Receipts - Register made by accused in respect of the said 200 bags. Ex. P3 is the bill relating to that consignment and it has been paid by the State Huzur Treasury through the Bank of Mysore on 30-4-1934. The handwriting and signatures of accusedin Exts. P18 and 19 have been identified by P.Ws. 14, 17, 18 and 19. These materials establish that the said consignment of 200 bags, though received under a bogus indent, belonged to Government, that it was paid for by Government, that accused took delivery thereof at Mandya Railway Station on 28-1-1934 in his capacity as store-keeper of the Division, that he booked all the 200 bags in his own name to Mysore then and there, that he sold the said bags to P.W.6 as his own propert on 30-1-1934 and that P.W.8 took dolivery on the basis of the R.R. Ex. P26 given by accused. It is to be noted that the R.R. Ex. P17 was not endorsed to accused either by the E.E. or by A. Subba Rao prior to his taking delivery and that accused was able to take delivery with the help of P.W.4, merely because he was known to be the store-keeper of the Division. The legal effect of this will be

of suppliers at Bangalore from the quantity in their godowns on 13-2-1934 under the R.R. Ex. P20. The waggon No. is put down as 686 in it. The consignment arrived in Mandya on 19-2-1934 by 46 Down. The entry--Ex.P31(c)--in the Vehcile Register shows the said waggon Number. Ex. P30(b) is the entry in the Goods Delivery Book showing that the consignment arrived on 19-2-1934 and was delivered to accused the same day. Accused has signed the last column as R. Krishna Rao. Ex. P20a is the endorsement in the handwriting of accused. It is not signed by any body. Ex. P20b is another endorsement signed by accused reading as 'contents received. There is the office seal under it. Ex P27 is the R.R. under which accused booked the same 200 bags on the same day in his own name to Mysore. The waggon No. is put in it also as 686. The weight of the consignment is the same as in Ex. P20. The entry--Ex. P31b--in the Unloading Tally Book shows that the unloading took place at 18 hours. The entry--Ex. P33b--in the Loading Tally Book shows the same waggon and that the loading has taken place at 18.30 hours. Ex. P21 is the consignment note relating to Ex. P27 filled and signed by accused as R. Krishna Rao. The consignor is shown as Krishna Rao and the consignee is shown as self. Ex. P22a is the risk note relating to Ex. P27. It is also signed by accused with designation. Accused has put the date also in both as 15-2-1934. This date is no doubt wrong, but it is capable of two interpretations. It may be that accused had writ+ up Exts. P21 and P22, four days before the actual arrival of the consignment, in his anxiety to book it away to Mysore or it may be that accused wantonly ante-dated Exts. P21 and 22 with the idea of showing that the consignment has nothing to do with what was

received on 19-2-1934 under Ex. P20. Exts. P66 and 67 are receipts drawn up by accused on 19-2-1934 for unloading and carting charges for the consignment covered by Ex. P20 which he never actually paid. Accused has produced them before P.W.14 and got them cancelled and initialled by him. Ex. P68(b) is the entry in the Daily Receipts Register relating to that consignment. It is made by accused though the consignment was not put into the stores. Sambasivia (P.W.5) has sworn that the consignment booked under the R.R. Ex. P27 arrived in Mysore on 20-2 1934 in waggon No. 686 and that he delivered the consignment to Mahomed Ibrahim (P.W.6) on his surrendering the R.R. Ex.P27 with the endorsement--Ex. P27c--. Ex. P38a is the entry in the Goods Delivery Book showing this. Ex. P35b is the entry in the Vehcile Register showing the waggon No. as 686. Ex. P39a is the entry in the Unloading Tally Book showing the waggon No. as 686 and that it arrived by 42 Down on 20-2-1934. Ex. P40 is the Gate Pass Record relating to that consignment and Ex. P41 is the delivery note. Hakim Mahomed Gouse (P.W.8) has sworn that he handed over Ex. P27 to P.W.6 with the endorsement--Ex.P27c, that P.W.6 took delivery and brought the consign-

of accused in Exts. P20a, 20b, 21, 22 and 27a have been identified by P.Ws. 14, 17, 18 and ~~18~~.19 These materials establish that the said consignment of 200 bags, though received under the bogus indent (Ex. P51), belonged to Government, that it was paid for by Government later on, that accused took delivery of the consignment at Mandya Ry. Station on 19-2-1934 in his capacity as store-keeper of the Division, that he booked all the 200 bags in his own name to Mysore then and there, that he sold the said bags to P.W.8 as his own property on 20-2-1934 and that P.W.8 took delivery on the basis of the R.R. Ex. P27 endorsed in his favour by accused. It is to be noted that the R.R. Ex. P20 was not endorsed to accused either by the E.E. or by the manager of the office, that accused made an endorsement in his own favour and that he took dx delivery on the basis of it and with the help of the fact that he was known to P.W.4 to be the store-keeper of the Division. The legal effect of this also will be considered later on.

15. Thus, 42 tons of cement had been received under the bogus indent (Ex. P51) up to 2-3-1934. Not being satisfied with it, accused took advantage of the letter Ex. P55 addressed to the firm ~~fm~~ of suppliers on 2-3-1934, to insert a reminder therein, as per Ex. P55 in respect of the balance of cement still due under Ex. P51. Another consignment (fourth) of 200 bags under the indent (Ex. P51) was booked by the firm of suppliers after that at Bangalore to the E.E. at Mandya on 17-3-193 under the R.R. Ex. P23. The waggon No. is not noted in Ex. P23. The entry--Ex. P30c--in the Goods Delivery Book shows that the said consignment arrived at Mandya on 19-3-1934 in waggon No. 296 and that accused took delivery of it and signed the last column in Ex P30c. Ex. P31c is the entry in the Vehcile Register showing

the waggon No. as 296. Ex. P23a shows that accused signed for the E.E. Ex. P23(b) is the signature put by accused before the Station Master (P.W.4) while surrendering the R.R. The entry--Ex. P31c--in the Loading Tally Book shows that 100 bags out of the said 200 bags were booked by accused to Mysore then and there and that the said consignment was left in waggon No. 296 alone. Ex. P31c shows th at the loading was at 17 hours and that the consignment left for Mysore by 44 Down on 19-3-1934 alone. Ex. P28 i the R.R. relating to that consignment. The waggon No. is shown in it also as 296. Ex. P24 is the consignment note relating to Ex. P28. The upper half is in accused's handwriting and accused has signed it with designation. The consignor is shown as Gundu Rao with a purpose and the consignee is shown as self. Ex. P25 is the risk-note relating to Ex. P28. It is also written and signed by accused. Smabasivia (P.W.5) has sworn that the consignment covered by Ex. P28 arrived in Mysore on 20-3-1934 and that it was delivered to Abdul Khader (P W.7) asper entry --Ex. P42a-- in the Goods Deliver Book. The waggon No. is shown as in Ex. P42a also as 296. The consignor is shown as Gundu Rao and the consignee is self. The waggon No. is found in Ex. P43a and Ex. P44a which are entries in the Vehcile Register and Unloading Tally Book. Ex. P48 is the Gate Pass Record relating to that consignment. Abdul Khader is the son of Md. Ghouse (P.W.8) and is examined as P.W.7. He has sworn that P.W.8 gave the R.R. Ex. P28 with the endorsement P28a, that he gave it and the freight to P.W.5 and took delivery of the consignment after signing the entry--Ex. P42a. Ex. P49 is a letter written by accused to P.W.8 on 20-3-1934 in respect of the said consignment. enclosi

the R.R..Ex. P49a is the envelope relating to Ex. P49. Ex. P58 is a receipt granted by accused on 22-3-1934 evidently for the price of that consignment. The writing and signatures of accused in Exts. 23a, 23b, 24, 25, 49, 49a and 50 have been identified by P.Ws. 14, 17, 18 and 19. There is no entry in the Daily Receipts Register in respect of that consignment. Ex. P5 is the bill in duplicate for that consignment. It is clear that it has not yet been paid, as stated by P.W.1. This may be due to the fact that the consignment was not at all brought on the registers of the divisional stores. It may be added here that the Exts. P17, 20 and 23 were not sent by insured post to the S.E., because the freight had been paid at the booking station by the firm of suppliers and that no freight amount accompanied these R.Rs. Exts. P12 to 15, no doubt, show that certain registered letters were received by accused. It is not necessary to show that the receipts relate to the several R.Rs. received by accused. The evidence shows that accused has taken delivery as part of his duty of almost all the consignments received under R.Rs. addressed to the S.E. Thus, accused received, altogether, 52 tons of cement under Ex. P31 by 19-3-1934 and except the last consignment of 10 tons, the other 42 tons were paid for from Government funds.

16. The remaining 8 tons were not supplied because a fresh indent for 22 tons had already been sent to the suppliers as per Ex. P5 on 2-3-1934 and a reminder like Ex. P74 had also been issued on 14-3-1934. Mr. K. R. Sreenivasan (P.W.9) of the firm has sworn that this was the reason to ignore the 8 tons. It is significant that the indent Ex. P5 was sent after following some office routine. Ex. P57 is a report from the Assistant Engineer stating his requirements of cement. Ex. P57b i

the note made by accused thereon to the effect that the balance of bags on hand on 2-3-1934 was about 50. The original figure was 100 and it has been changed to 50. Accused has admitted that memo and his explanation is that he put 50 bags in it after excluding the bags for which he had received indents from piece workers in the sub-divisions. There is no evidence of this. The said figure 50 is said to support the fact that the two items of 200 bags each received on 26-1-1934 and 19-2-1934 were not actually put into the stores but were booked away to Mysore. Taking the real balance of cement in the stores on 23-12-1933 (31-12-1933 as 35 bags only, as pointed out in paragraph 12 above Mr. S. Govinda Rao (P.W.22) was asked to state what the closing balance on 2-3-1934 would be on that basis. His reply is that it would be 459 bags. If we deduct from this figure the two items of 200 bags each falsely entered in Exts. P69(a) and 69(b) as put into the stores on 26-1-1934 and 20-2-1934, the balance will be only 59 bags and this actual balance should have been responsible for the words 'about 50' in Ex. P57b. I find that Ex. P70 supports P.W.22. The closing balance shown in it on 2-3-1934 is 899 bags. This figure was necessarily influenced by the 440 bags received on 24-12-1933 and entered in the books in January, as per Ex. P68a and the two items of 200 bags each received on 26-1-1934 and 19-2-1934 regarding which only paper entries were made in the book. Deducting the total of the said three items viz., 840, the actual balance on 2-3-1934 should have been 59 bags, as stated by P. W. 22 The said low figure should have been responsible for the anxiety with which accused put through an indent like Ex. P55 and sent a reminder like Ex.P74. Much of the office routine is ignored in respect of

Exts. P55, 57 and 74 and they too have not passed through the hands of the accountant (P.W.19) or the headclerk (P.W. A consignment of 440 bags was received under the R.R. Ex. P76 subsequent to Ex. P74. Ex. P75 is the covering letter relating to it. The said consignment has been taken delivery of by accused and entered as Ex. P53(c) on 9-4-1931 in the Daily Receipts Register. It was received after Mr. C. T. N. Iyengar (P.W.20) took charge and he has admitted that he did not see whether the said 440 bags were physically put into the stores, though it was his duty to do so. This coupled with the fact that the articles in the stores were not checked at the time P.W.20 took charge from Mr. N. Subba Rao (P.W.14) shows that accused had the same scope for misappropriation amount after P.W.20's advent as he had in Mr. N. Subba Rao's time

17. There was thus a continuous process of misappropriation since about the middle of 1933 (so far as the evidence available in this case goes) and several bogus indents seem to have been sent prior to Ex. P51. Ex. D5 is an entry showing that a bill receiving on 31-7-1934 for Rs. 4359-4-0 also remains unpaid till now. Both the Executive Engineers (P.Ws. 14 and 20) have admitted that the firm of supplier served notices on them for Rs. 8000 and od --the total of the bills remaining unpaid and that a suit has also been filed against them and Government for that sum. This heavy unpaid balance must be the accumulation of bogus indents. The utter disregard of office procedure in respect of papers prepared by accused for placing orders for demand and general slackness in supervision, though the D.P.I. Account Code made the Executive engineers personally responsible for the stores, made it possible for accused to perpetrate a systematic fraud by placing orders for amount she ever he liked and to misappropriate large quantities thereof.

18. Some of the defects in the procedure of the office of the Executive Engineer, No. 5 Irwin Canal Division at Mandya both on the executive and account side, revealed in the evidence are these:--Ex. P10 shows that only the accountant (Mr. Singrienger-P.W.19) was authorised to received registered letters and insured articles addressed to the E.E. In spite of it, accused has received registered letters xxd xxxx

b on done by Mr. C. T. N. Iyengar (P.W.20) on 3-9-193 as per Ex. P77(a). Ex. P77 shows the balance on 30-6-1934 as 1397½ bags and contains entries like Ex. P77b and fresh and unauthorised columns like Ex. P77(c) to show the cement issued or spent subsequent to 30-6-34. It is therefore obvious that the counting said to have been done on 3-9-1934 could not have served any useful purpose as the half-yearly counting prescribed by rules. Even the surprise visit paid after the anonymous letter Ex. P78 was placed in P.W.20's hands was delayed by four days though the Deputy Chief engineer camped in Mandya till the 20th.

19. Accused has urged in his statement that he did not take delivery of the consignments on 28-1-1934 and 19-2-1934 and that he never handled the railway-receipts relating to them. But the evidence adduced by the prosecution in regard to the fact that accused took delivery of those consignments, that he booked them then and there in his own name and sold them to M/s. Gouse (P.W.6) in Mysore can be described as overwhelming. It cannot be urged that the records of Mandya and Mysore Ry. Stations, the several ~~registers~~ railway-receipts, consignment forms and risk notes and the letters and receipts produced by P.W.8 have all be concocted for the purposes of this case. As regards Exts. 151 and 63, accused's contention is that he had no hand in them and that there was an office draft in manuscript which has been substituted by the prosecution. The accountant (P.W.19) has admitted having seen some such draft in the first week of December. But his admission cannot apply to Exts. 151 and 63, because the total quantity ordered under that draft was only 40 or 42 tons. It might be that it was one for which indent required by accused and that he gave it up for preparing an indent

for 60 tons. There is ample evidence in the case that all indents for cement had to originate in the stores and that the office-copies were remaining in accused's custody after the fair copy was despatched hence, even if the manuscript draft referred to by accused existed, he must himself have suppressed it after preparing Exts. P51 and 63. There is absolutely no truth in any of the statements put forward by accused. He has in a way conceded that he was comparing fair-copies and writing 'To' and 'From' Registers in P.W.16's ~~xxx~~ branch. This lends some support to the prosecution case that accused inserted the entries marked as Exts. 58(d) and 58(e and that he handled Exts. 49, 51 and 63.

20. The materials discussed in paragraphs 8, 10, 15 and 18 above may be enough to convict ~~xxxxx~~ accused under one or other of the three alternative charges (under Sections 467, 467/109 and 471 I.P.C.) relating to forgery. But the question is whether his acquittal of the charge under Sec. 467 I.P.C. in the trial before the Assistant Sessions Judge does not operate as a bar under Sec. 403, Criminal Procedure Code, to his trial again for the offence under that Section or under the allied Sections for which alternative charges have been framed now on the same facts. The defence-counsel (Mr. Chennakesavia) raised this objection by means

helpful in minimizing the length of the trial. But at the stage of arguments, he stated that he wouldn't address any arguments on the merits before this Court and that he could reserve his arguments for a better occasion, (meaning the appellate court). I am constrained to observe that this attitude was not fair to aid the Court, when the point raised was a pure question of law. I have however had the unflagging help of the Public Prosecutor on the point. I have considered the authorities cited by him and the arguments based by him on Sec. 423, Criminal Procedure Code. His contention was that under Sec. 423(b) Criminal Procedure Code, the Appellate Court could order a retrial on all the facts and on all the charges since the first trial was held to be illegal by reason of misjoinder. The appeal was heard by the Sessions Judge and there was no appeal by Government against the order of acquittal. - The first question is whether the Sessions Judge could set aside the order of acquittal in respect of the charge under Sec. 467 I.P.C and whether he could order a retrial on the charge. Under Sec. 417, Criminal Procedure Code, it is only the Government that can appeal against any order of acquittal and the appeal lies only to the High Court. My humble opinion is that the Sessions Judge has no power to set aside an order of acquittal when it was passed by a Court of competent jurisdiction. The question whether the trial was legal or illegal can not arise before the Sessions Judge in respect of an order of acquittal. Section 423, Cr. Procedure Code, no doubt, uses the words 'Appellate Court' in general terms, but it keeps the Appellate Courts distinctly in view. One Appellate Court is the Court which is competent to hear an appeal against an order of acquittal viz., the High Court-(Sec. 423 (i) a (b) the other Appellate Court is the Court competent to hear an appeal from conviction --Sec. 423 (b). The Sessions Court is only an Appellate Court of the latter class. Sec.

423 (b) gives the latter Court the power to revise the finding and sentence and to acquit or discharge accused or to order him to be retried by a Court of competent jurisdiction subordinate to the said Court.sf This power is necessarily restricted to the offences in respect of which there was a conviction. I am supported in this view by the decision in Lala Vs. Emperor (A.I.R. 1933 Allahabad 941). That case clearly lays down that where the accused were tried by an Assistant Sessions Judge under four charges, were acquitted of two charges but convicted of two other charges and where no appeal was filed by Government against the order of acquittal and where accused appealed from the conviction, the Appellate Court Judge (viz. the Sessions Judge) could order a retrial only of the charges on which the accused were convicted and against which the appeal was filed and that the retrial could not cover the

respect of which there was an acquittal in the previous trial. All the previous authorities relating to the point have been reviewed in that case and particular stress has been laid on the decision in Abdul Hamid Vs. Emperor (A.I.R. 1927 Patna 13) which has laid down that where there are two different sets of fact and a verdict has been given on one set which no one impugnes, then it is difficult to see why when an appeal has been brought on the other set of facts the order for retrial should reopen both. The decision of our own High Court in 13 Mysore Law Journal 48 no expresses the view that the High Court could have set aside the acquittals also. But we have to remember that the High Court was quite competent to do so both under its revisional powers and under its ordinary powers under Sec. 423(1)(a) as an appellate court. Hence, that case

cannot be applied to a retrial ordered by a Sessions Jud
It is also significant that in the said case, though the whole trial was held illegal, the High Court did not set aside the orders of acquittal of accused 1 to 7 in respect of the charge under Sec. 397 I.P.C. and the general order of acquittal passed in regard to accused 8 and 9 in respect of all the offences with which they had been charged. I am therefore of opinion that the present accused cannot be convicted in this trial of any of the offences under Sections 467, 467/109 and 471 I.P.C.

21. The next question is whether accused has committed the offence of criminal breach of trust or theft in respect of the two items of 200 bags each which are the subject matter of the ~~xxxxx~~ alternative charges under Sections 409 and 381 I.P.C. Some doubt seems to have arisen as to whether there was an actual entrustment of those bags to accused by the Executive Engineer or by some other person on his behalf, because the first consignment was taken delivery of by accused on 28-1-1934 before the R.R. Ex. P17 was endorsed and given to him and the second consignment was taken delivery of by him on 19-2-1934 on the basis of the endorsements made by him in his own favour as per Exts. P20(a) and P20(b). But the fact that accused was the store- keeper of the Division whose duty it was to take delivery of consignment and to cart them to the stores and that he was actually taking delivery of all consignments seems to me to be enough to hold that there was entrustment, when accused could use his position as store-keeper and take delivery of consignments with or without the production and surrender of the R.Rs. which relating to the consignments. We have to note that even for the charge of theft (under Sec. 381 I.P.C.) the constructive possession of the Executive Engineer has to be inferred from the fact that the consignment was addressed to him and that

usual course. It is after such constructive entrustment or possession that accused has booked the consignments then and there in his own name and moved the property away from Mandya Ry. Station towards Mysore. The dishonest intention of accused in respect of those consignments can be inferred from the previous and subsequent acts proximat in time to those covered by the charges about which evidence has been adduced in the case. This is the law laid down in 35 M.C.C.R. 319. In this view of the case, ~~fxkhixmxixxxhsxxxaxxnmxxxioxnxyxd~~ and the opinions given by the assessors on these charges, I think it better not to say definitely whether the offence was criminal breach of trust or theft but to convict accused of those offences in the alternative under the powers given by Sec. 367 (iii), Criminal Procedure Code.

22. For all the foregoing reasons, I convict accused in the alternative, of both the alternative charges under Sections 409 or 381 I.P.C. and acquit him of all the ~~xhxxx~~ three charges under Sections 467, 467/109 and 471 I.P.C. As regards the sentence, I have to take a serious view of the offences for which accused has been convicted, because they are the result of the utter abuse of the confidence reposed in him by Mr. N. Subba Rao and they are backed up by daring forgeries of official documents. I accordingly sentence accused for each of the two alternative convictions to suffer rigorous imprisonment for an year and a half and to pay a fine of Rs. 500/- for each offence. In default of the payment of ~~fixe~~ each item of fine, accused will suffer further rigorous imprisonment for 6 montsh. The sentences are directed to run

Dear Mr Jaya Rao,

Yesterday I submitted to the General Secretary the copy of judgment in S.C. No. 2 of 35-36 (Govt. vs. R. Krishna Rao) on the file of the Additional Assistant Sessions Judge, Ongole. I am sure you will have read it thoroughly before you receive this letter.

The Additional Assistant Sessions Judge has quite unexpectedly, thought fit to sit in judgment over the order of the Sessions Judge in directing a re-trial for all the offences with which the original Court had charged the accused. The Original Court was the Court of the Assistant Sessions Judge. Forgery was one of the offences on which the accused was tried but acquitted in that Court. The accused had however been convicted on other charges tried at the same time. The accused appealed against that conviction to the Sessions Judge. The latter held that the whole trial was vitiated by misjoinder of charges and ordered a re-trial by the Assistant Sessions Judge. If the accused had really been tried by the Assistant Sessions Judge, I am afraid, he could not expressed the opinion that the Sessions Judge was incompetent to set aside the order of acquittal on the charge of forgery. The Additional Assistant Sessions Judge received the case to his file by transfer. He merely continued the trial which the Assistant Sessions Judge had previously commenced. Such a Judge has now held that the Sessions Judge had no power under Sec. 423 (1) (b) to order a re-trial of the accused.

Two questions of law then arise for decision (1) Was the Additional Assistant Sessions Judge competent to criticise and set aside the order of the Sessions Judge from whom he derived jurisdiction to try the accused for forgery?
(2) Is the law expounded by the Additional Assistant Sessions Judge correct in so far as he holds that the word 'Appellate Court' in Sec. 423(1)(b) apply only to the High Court and not to the Court of Session. The purpose of my address of this D.O. to you is this:—

Not within a few days, it is likely that the District Magistrate may make a reference to have the High Court on the revisional side to set aside the order of the Additional Assistant Sessions Judge. I am also credibly informed that the learned

Sessions Judge has taken serious objections to the steps taken by the Additional Assistant Sessions Judge. It is very likely that the High Court on a perusal of the Calendar might issue a rule calling upon the accused to show cause as to why the order of the Additional Assistant Sessions Judge should not be set aside. The finding of the Additional Assistant Sessions Judge is in favour of the prosecution. On the facts it is held that the charge of forgery has been clearly established. But the Judge holds that the prosecution for the offence of forgery was barred under Sec. 403 Cr. P.C.

In case Revision Petition has to be filed before the High Court the Government will have to instruct Mr. Nageswara Rao as usual. At the close of the hearing the Additional Assistant Sessions Judge did not hear arguments at all. I just got up to argue the points. But the other side was not prepared to argue. I was then asked by the Court to file a memo quoting all the cases in support of my contention. The learned Additional Assistant Sessions Judge does not seem to have applied his mind to the trend of the decisions quoted by me. I am of opinion that all the High Courts are agreed that the appellate Courts (including the Court of Session) are competent to order a re-trial of an acquitted prisoner when the entire proceedings are cancelled as illegal.

In the absence of a revision Petition to the High Court by the aggrieved Party against the order of the Sessions Judge, the Additional Assistant Sessions Judge was in error when he made up his mind to criticise the order of the Sessions Judge.

Copy of the memo filed by me before the Additional Assistant Sessions Judge is enclosed for your reference.

In the Court of the Addl. Assistant Sessions Judge Mysore

S.C. No. 2 of 35-36

Govt. of Mysore — R. Krishnadas

Memo filed by the Public Prosecutor.

1. In the Sessions case No. 8 of 34-35, the accused was acquitted on the charge of forgery. In M.C.A. No. 40 of 35-36 the entire proceedings of S.C. No 8 of 34-35 were held illegal and a re-trial was ordered. Therefore it is not correct to say that the order of acquittal passed by the Assistant Sessions Judge continues to be in force so as to bar the second trial of the accused on the charge of forgery.

2. The Power to order a new trial in the course of disposing of an appeal is conferred by Sec. 423(1)b. on all appellate Courts. There is no distinction drawn in this respect between a High Court and a Sessions Court.

3. The learned Sessions Judge has definitely ordered the re-trial of the accused on the charge of forgery.

4. The following cases furnish authority for the position that when a re-trial is ordered the whole case is re-opened including the case in which an accused has been previously acquitted.

22 Cal. 377 Jury trial by Addl. Sessions Judge.
23 Cal. 975 (980) Trial with the aid of assessors by Sessions Judge.
40 Cal. 163 Jury trial by Addl. Sessions Judge
37 Mad. 119 Jury trial by Sessions Judge.

5. The Calcutta and Madras High Courts are of opinion that even a verdict of not guilty by the jury can be set aside. When a re-trial is ordered by the appellate Court Both the Allahabad and Patna

High Courts are of opinion that the order of acquittal based on the verdict of the jury cannot be set aside by an appellate Court while ordering re-trial except where there is misdirection.

A.I.R. 1927 Patna 13 Trial by jury and assessors before an Assistant Sessions Judge. The opinion of the Senior Judge Prevailed

A.I.R. 1933 All 941 (948) Trial by jury and assessors before an Asst. Sessions Judge.

6. In 34 N.L.R. 345 the magistrate acquitted the accused under one charge but convicted on another. There was an appeal to the Sessions Judge. That Court was of opinion that the accused should have been convicted under the charge on which he had been wrongly acquitted by the magistrate. The Sessions Judge said he could not interfere with the order of acquittal On revision the High Court of Madras held that the Sessions Judge was wrong. The order of acquittal was set aside and the case remanded re-hearing of the appeal

7 It is submitted that the learned Sessions Judge's order contained in the closing paragraph of the judgment is absolutely correct. There are no authorities in support of the contention put forward by the defence. The trial before the Assistant Sessions Judge was a nullity. The appellate Court was competent to order the retrial of the accused for all the offences with which he stood charged before the Assistant Sessions Judge

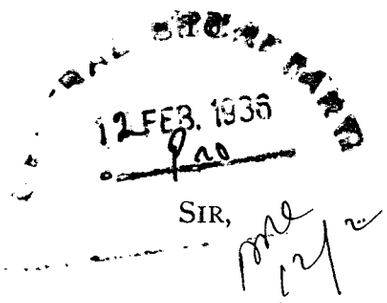
No. G3. 235/35-36.
Encl. 4.

OFFICE OF THE DISTRICT MAGISTRATE,
MYSORE DISTRICT,

Dated, Mysore 8th February *1936*.

From

B. T. KESAVAIENGAR, Esq., B.A.,
District Magistrate,
Mysore District, Mysore.



M. VENKATESA IYENGAR, Esq., M.A.,
Secretary to the Government of Mysore,
General Department, *Bangalore.*

SIR,

In continuation of this office No.G3. 235/35-36 dated 30th January 1936 regarding the trial of accused - R. Krishna Rao in the Mandya Cement theft cases before the Additional Assistant Sessions Judge, Mysore, I have the honour to state that the accused has been convicted and sentenced to imprisonment and fine in S.C.2 of 1935-36. The reports of the Public Prosecutor, Mysore ~~District~~ Division & Sessions + Police Bench Clerk, received in this connection are enclosed herewith for reference.

I have the honour to be,

Sir,

Your most obedient servant,

DISTRICT MAGISTRATE,

Mysore District.

MEMORANDUM

To 1 : 2 : 1936

The Public Prosecutor
Mysore Division, Mysore

The District Magistrate
Mysore District, Mysore.

11248

No. 3 FEB. 1936

Subject— S.C. No. 2 of 35-36 (Government vs R. Krishnadas) on the file of the Additional Assistant Sessions Judge Mysore

Sir

I have the honor to report that the second trial in the Mac Cement case was commenced on the 15th January. Owing to the unforseen holidays that supervened the trial could not be closed till yesterday. The accused has been charged in this case for four and two acts of criminal breach of trust. The four assessors chosen for the trial expressed their unanimous opinion of guilt on all the counts. The case is posted to the 4th instant for judgment. As against the conviction passed by the Additional Assistant Sessions Judge in the first case, the accused has preferred an appeal to the Court of Sessions. The appeal is posted on the

1—GPB—150 Reams—12-12-36

[Please reply overleaf

5th instant for hearing. The next trial of the accused will be a joint trial of three acts of falsification of accounts. This trial will not occupy more than 3 or 4 days. The question of withdrawing the charge sheets against the accused may be reserved for consideration till after the final result of the appeals are known

(Pending before the Special Magistrate Hearing)

I have the honor to be
Sir,
Your most obedient servant
[illegible]

Public Prosecutor

OFFICE OF THE DEPUTY C...
No. 1108
4. FEB. 1936

192

From The Public Prosecutor,
Mysore Division,
Mysore.

To The District Magistrate,
Mysore Division,
Mysore.

Dated 4-2-36

Despatched

Received

General No. 860

No.

Enclosure No.

Sir,

I have the honour to state that the Additional Assistant Sessions Judge, Has just given his Judgment in S.C.2 of 1935-36 (Government Vs. R.Krishna Rao)

The accused stood charged with three counts of offences Viz.,

1) Sec.467 or Sec.467/109 or Sec.471 I.P.C.
2) Sec.409 or Sec.381 I.P.C.
3) Sec.409 or Sec.381 I.P.C.

The learned Judge has acquitted the accused on the first count on the ground that the accused had previously been acquitted on the charge of forgery under Sec.467 I.P.C. and that the court of Session was not competent to set aside the order of Acquittal and that therefore the present trial is barred under Section 403 Cr.P.C.

It is submitted that the view adopted by the learned Additional Assistant Session Judge is erroneous. Yesterday I filed a Memo quoting all the authorities in support

of the view taken by the Sessions Judge in ordering retrial for the offence of forgery.

On the 2nd and the 3rd counts the accused has been sentenced to 18 months R.I. and a fine of Rs.500/- on each, the sentences to run consecutively.

I have the honour to be,

Sir,

Your most obedient servant,

K. Ramadas

Public Prosecutor
Mysore Division.

Form No. 24]

MYSORE POLICE DEPARTMENT.

In reply, please quote number, date and short title.*

Received ....*Registered*..... .....

From (Name) R. Muthoji Rao Scindia, Esquire, B.A.,

(Designation) District Superintendent of Police ,

Post Box....., (STATION)....French Rocks.....

Telegraphic Address.....Polsup French Rocks.

To

The Deputy Commissioner & District Magistrate,

Mysore District,

MYSORE.

Bl- *No.*16/34-35.., *dated*...23rd January.*193*6.

SIR,

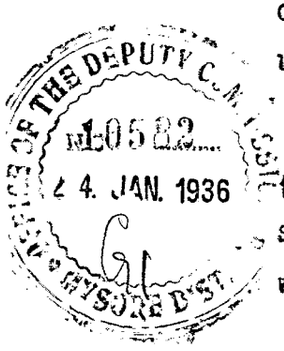
ENCLOSURES .....

.....

.....

SPARE COPIES.....

*In continuation of my letter No. Bl-16/34-35 dated 11-1-36 reporting the progress in the retrial of Al-Krishna Rao, accused in the Mandya Cement Case, I have the honour to state that the Judgment was pronounced by the Additional Sessions Judge, Mysore, convicting the accused under section 409 I.P.C. and sentencing him to undergo Rigorous Imprisonment for one year and to pay a fine of Rs. 400/- in default to undergo Rigorous Imprisonment for 4 months.



The second charge of forgery which was posted to 15-1-36 was adjourned to 16-1-36 for nonserving of summons to assessors. On 16-1-36, the following charges were framed against him:-

1) Criminal Breach of Trust in respect of 200 bags of cement received on 28-1-34.

2) The alternative charge under section 381 IPC in respect of the bags noted above.

3) Criminal Breach of trust in respect of 200 bags of cement received on 19-2-34.

4) The alternative charge under section 381 IPC in respect of the bags noted above.

5) Charge of forgery under section 467 I.P.C.

6) Abetment of forgery under section 467/109 IPC

7) charge of using a forged document under section 471 I.P.C.

The accused pleaded not guilty to the charges framed against him and the trial began. ~~Seven~~ Three Prosecution Witness

Prosecution Witnesses have so far been examined and the Case is posted to 28-1-36.

Further Progress will be duly reported

I have the honour to be,
Sir,
Your most obedient servant,

Dist. Superintendent of Police,
French Rocks

WD 0211- GPB- 25,000 -4-9-34

Form No. 24]

154

MYSORE POLICE DEPARTMENT.

In reply, please quote number, date and short title.*

Received ....*Registered*..... .....

From (Name) R. Muthoji Rao Scindia, Esquire, B.A.,

(Designation) District Superintendent of Police,

Post Box....., (STATION)....French Rocks.

Telegraphic Address....Polsup French Rocks.

To

The Deputy Commissioner and District Magistrate,

Mysore District, Mysore.

B1 -*No*16/34-35..., *dated*...3rd February *1936*.

SIR,

ENCLOSURES .....

.....

.....

SPARE COPIES.....

In continuation of my letter No. B1-16/34-35 dated 23-1-36 reporting progress in the retrial of K.Krishna Rao, accused in the Mandya Cement Case, I have the honour to state that ~~ix~~ the Forgery Case is closed after the examination of nine witnesses. The Case is posted for Judgment to 4th February 1936.

The accused has appealed against the conviction and sentence passed under section 409 I.P.C. by the Addistional Assistant Sessions Judge in the first case to the Sessions Judge, Mysore Division. The sentence has been susponded and the appeal has been posted for hearing on ~~the~~ 5th February 1936.

I have the honour to be,
Sir,
Your most obedient servant,

Dist. Superintendent of Police,
French Rocks.

Sahu

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat 155

Dated, Bangalore, 27th February 1936.
28

No. P57 sq Law 205—3
Sec I.

From

The *General Secretary to the Government of His Highness the Maharaja of Mysore.*

To

The District Magistrate,
Mysore District, Mysore.

Sir,

With reference to the correspondence ending with your letter No.G3-235/35-36 dated 8th February 1936 forwarding copies of letters from Public Prosecutor, Mysore in the matter of moving the High Court to set aside the orders of acquittal passed in respect of the charge of forgery by the Additional Assistant Sessions Judge in Sc- No.2/35-36 (Government Vs. R. Krishna Rao), I am directed to forward herewith a copy of the Government Advocate's opinion in the matter and to state that Government agree with the same and see no reason to take further action in the matter of filing of any appeal or revision.

I have the honour to be,
Sir,
Your most obedient servant,

Sd. M. Venkatesa Iyengar
General Secretary to Government.

Aga/3.
Memo No. P5760. Dated, Bangalore the 27th February 1936.
28

Copy of the above is forwarded wo the Public Prosecutor, Mysore, for information.

By Order,

For General Secretary to Government.

Appendix F G—1]

SUBJECT.....

.....

.....

Section Law

File No. 205-34.

Serial No.

Diary No. of letter replied to.....

No. P 5759(1)

To The D.C. ~~Dr.~~ Mysore

General and Revenue Secretariat

( )

the *193*

Sir,

Date of issue 28.2.36

I have reference to the Correspondence ending with your G3 235/35-36 letter no. ~~456~~ dated 8/2/36 forwarding ~~Selection~~ Copies of letters from P.P. Mysore in the matter of moving the High Court ~~sanction of Govt to file a~~ to set aside the order of acquittal ~~obtain petition against the Judge~~ passed in respect of the charge of forgery ~~case~~ by the add: Dist: Sessions

Signed by Dm. V. R. J.

Judge in Sc. no. 2/35-36 (Govt vs R. Krishna Rao) I am directed to forward herewith a C/s of the G. Ad's opinion in the matter and to state that Govt agree with the views & see ~~the Circumstances pointed out~~ no reason to take further action ~~Govt think that this is not a~~ in the matter of filing of any appeal ~~for case for appeal~~ or revision.

List of enclosures.....

Copied by .....

Examined by.....

WD 03601—GPB—30,000—23-9-35

I have the
no. P 5760. dt 28.2.36 from Govt
C/s to the D.H. Mysore

5643
P 835

157

--GPB--

19

From The Public Prosecutor
Mysore Division,
Mysore

To The General Secretary to
the Govt. of Mysore
Bangalore

Dated

Despatched 9-3-36

Received

General No. 998
No.

Enclosure No.

Sir,

I have the honour
to state that the
Mysore Criminal
appeal No. 92/35-36
(R. Krishna Rao & Govt.,
on the file of Sessions

158

Court Mysore, which was argued on 19-2-36, was dismissed on 7-3-1936 The conviction and sentence (one year's R I + Rs400 fine) are confirmed

I have the honour to be
Sir,
your most obedient servant,

K Rangaswamy

Public Prosecutor
Mysore Division

6060 159

No. G3. 235/35-36.
Enc.

OFFICE OF THE DISTRICT MAGISTRATE,
MYSORE DISTRICT.

Dated, Mysore, 28th March 1936.

FROM

B. T. Kesavaiengar, Esq., B.A.,
~~THE~~ DISTRICT MAGISTRATE,
MYSORE DISTRICT, MYSORE.

Home 205-36(7)

To

M. Venkatesa Iyengar, Esq., M.A.,

General Secretary to the Government of Mysore,
Bangalore.

SIR,

MANDYA CEMENT CASE.

In continuation of this office No.G3. 235/35-36 on the above subject, I have the honour to report for the information of Government that out of the 3 separate trials before the Additional Sessions Judge, ~~to~~ in which charges were framed against Store-keeper Krishna Rao, the first case ended in conviction and the same was confirmed in appeal by the Court of Sessions. In the second case the accused has been convicted on two out of three counts. It is reported that the accused preferred an appeal on 25th March 1936 to the Court of Sessions against the conviction and sentence passed in the second case. The third case is still pending before the/Assistant Additional Sessions Judge. The total period of sentence the accused Krishna Rao has to suffer in these two cases will be four years imprisonment and besides this he has to pay a fine of Rs. 1400/- or undergo default term of imprisonment for 16 months. The result of appeal in the second case will be duly reported.

I have the honour to be,
Sir,
Your most obedient servant,

District Magistrate,
Mysore District.

7-9-36

No. G3-235/35-36
Enc. 3

OFFICE OF THE DISTRICT MAGISTRATE,
MYSORE DISTRICT.

Dated, Mysore, 28th August 1936.

Law 205-34-8

FROM

T. G. RAMA IYER, Esq., B.A.,
THE DISTRICT MAGISTRATE,
MYSORE DISTRICT, MYSORE.

To

M. VENKATESA IYENGAR, Esq., M.A.,
General Secretary to the Government of Mysore,
Bangalore.

SIR,

GENERAL SECRETARIAT
31 AUG. 1936

Mandya Cement Defalcation case - withdrawal of other pending charges.

In continuation of this office letter No.G3.235/35-36 dated 27th March 1936 on the above subject, I have the honour to enclose herein a copy of the Judgment in Criminal Appeal No.105 of 35-36 on the file of the Sessions Judge, Mysore, confirming the conviction and sentence passed by the Assistant Sessions Judge in Sessions Case No.2 of 1935-36. I beg to submit in this connection that out of the 3 trials before the Assistant Sessions Judge, 2 ended in conviction and appeals preferred in both these cases were confirmed by the Sessions Judge. The total period of sentence the accused Krishna Rao has to suffer will be four years Rigorous Imprisonment and besides this he has to pay a fine of Rs. 1,400/- in default to undergo a further term of 16 months Rigorous Imprisonment. The other trial relating to the charges of falsification of accounts is still pending before the Additional Sessions Judge. The Public Prosecutor is of opinion that this case may be withdrawn.

The Public Prosecutor in his letter No.1053 dated 21st March 1936 (copy enclosed) has opined that out of the charge sheets pending before the Mandya Magistrate, one or two cases may be proceeded with in order to fix the liability of the receivers of stolen property, the propriety of proceeding against the receivers being left to the discretion of Government. These

questions

questions had to be deferred till the disposal of the appeal referred to above. There are 14 Charge Sheets pending before the Mandya Magistrate as detailed in the margin. As already submitted in this office letter No.G3. 235/35-36 dated 30th January 1936, the question of pressing the pending charges would not only involve a great deal of expense, but also trouble to a large number of official and non-official witnesse in the cases. It is also explained in this office letter No.G3. 235/35-36 dated 18th September 1935, that the cases in which Singraiengar, second accused was acquitted were put up as test cases and all the available evidence against him was advanced, and that if the other pending cases have to be presse it would be on evidence similar to that already let in or on the very evidence already adduced. It was therefore suggested that there was no use in pressing the other pending charges against him, if it was merely to secure a conviction as against him.

8 against A1, A2 and A3.	
1 against A1 and A2.	
5 against A1 only.	

14	

If the Government consider that the punishment meted out to Krishna Rao in the above 2 cases i.e., 4 years rigorous imprisonment and Rs. 1,400/- fine in default to undergo further term of imprisonment for one year and four months, is sufficient, their approval to the withdrawal of the case pending before the Additional Sessions Judge, may kindly be obtained.

As regards the 14 pending charge sheets, the proposal contained in the Public Prosecutor's letter No.1053 dated 21st March 1936 for withdrawing the charge sheets except those necessary to fix the responsibility of the receivers is recommended for approval.

I enclose herein copy of letter No.257 dated 22nd August 1936 received from the Public Prosecutor, Mysore Division,

and copy of letter No.16/34-35 dated 15th August 1936 from the District Superintendent of Police, French Rocks, for favour of kind perusal.

Early instructions are solicited in the matter.

I have the honour to be,

Sir,

Your most obedient servant,

DISTRICT MAGISTRATE,

Mysore District.

Letter No.1053 dated 21st March 1936 from the Public Prosecutor, Mysore Division to the District Magistrate, Mysore District.

I have the honour to state that out of the three separate trials to which the charges framed against store-keeper R.Krishna Rao of Mandya were split up before the Additional Assistant Sessions Judge, the first case ended in conviction and the same was confirmed in appeal by the Court of Session. In the Second trial the accused was convicted on two out of three counts but he does not seem to have preferred an appeal yet. The total amount of sentence the accused has to suffer in the two cases will be four years rigorous imprisonment. He has besides to pay a fine of rupees 1,400/- or undergo default term of imprisonment for about sixteen months.

The question of pressing or withdrawing the remaining charges before the Additional Assistant Sessions Judge and those that are pending before the Special First Class Magistrate, Mandya, has to be decided now.

If I am free to express an opinion I should think that the charges of falsification of accounts still pending before the Additional Assistant Sessions Judge may be withdrawn. Out of the charge sheets pending before the Mandya Magistrate one or two cases may be proceeded with, in order to fix the liability of the receivers in future. The propriety of proceeding against the recivers or any of them may be left to the discrition of the Government. The evidence discloses that the store-keeper was systematically engaged in the disposal of Government Stores to certain merchants of Mysore. Whether these merchants had or had not the knowledge or reason to believe the origin of these stores depends on a variety of circumstances. If in the course of the enquiry the Court finds that the receivers were aware that the goods were stolen property nothing would prevent the Court from fixing criminal responsibility on them. It is common knowledge that the thief is after all acreature of the receivers. Thefts are facilitated because the thief knows that there is a ready market for his booty.

I would

I would therefore leave the matter for the due consideration of the Government and await instructions to proceed further in the matter.

Letter No.257 dated 22nd August 1936 from the Public Prosecutor, Mysore Division, Mysore, to the District Magistrate, Mysore District.

Subject:- Cement defalcation in the Irwin Canal Division, Mandya - Store-keeper convicted and sentenced to suffer rigorous imprisonment for 4 years and to fine - conviction confirmed in appeal - further action to be taken.

I have the honour to state that Store-keeper R.Krishna Rao has been convicted in two trials held before the Additional Assistant Sessions Judge, Mysore. The appeals preferred by the accused were dismissed by the Sessions Judge. The prisoner is now awaiting the third trial before the Additional Assistant Sessions Judge. It is learnt that a number of charge sheets are pending against the prisoner in the Court of the Special First Class Magistrate, Mandya.

Whenever an accused person has in the opinion of the Government been sufficiently punished in a criminal trial it is the usual practice to withdraw similar prosecutions if they are still pending enquiry. On this principle the trial before the Additional Assistant Sessions Judge and the charge sheets pending before the Special First Class Magistrate at Mandya appear to be fit cases for withdrawal from prosecution.

The District Superintendent of Police, French Rocks is the Officer that has to report to and take orders from the District Magistrate. The District Superintendent of Police has already been addressed twice on this subject.

It is therefore suggested that the District Superintendent of Police, French Rocks may be asked to submit a report to you directly and communicate your orders to me.

As the cases involved in the embezzlement of cement and other stores of the Irwin Canal Division, have an important bearing on the question of civil liability of the Government and certain Government Officers, it is suggested that the Government in the

Law

Law Department may be consulted about the expediency of withdrawing all the Criminal cases pending against the accused.

Letter No.B 1. 16/34-35 dated 15th August 1936 from the District Superintendent of Police, French Rocks, to the District Magistrate, Mysore District.

In continuation of my letter No.B1-16 of 1934-35 dated 14-2-1936 regarding Mandya cement misappropriation case, I have the honour to state that the accused R.Krishna Rao appealed to the Sessions Judge, Mysore Division against the conviction and sentence of 18 months R.I., and a fine of Rs.500/- on each of the two counts and in the appeal, the conviction and the sentence of the lower court was upheld by the sessions Judge.

This the accused has to suffer 4 years R.I., and to pay a fine of Rs.1400/- in default a further imprisonment of 1 year and 4 months.

A third case is pending before the Additional Sessions Judge, Mysore and 14 other charge sheets are also pending on the file of the Special First Class Magistrate, Mandya.

The public prosecutor, Mysore, who conducted the trials has opined in his letter No.4 dated 4-8-1936 addressed to me that in view of the adequate punishment already awarded to the accused the other pending charges could well be withdrawn and that a report may be sent up to the District Magistrate to pass such orders as he deems fit.

The Inspector General of Police has also directed that I might obtain the District Magistrate's instructions in the matter and act accordingly.

The letters from the Public Prosecutor and the Inspector General of Police in Mysore, Bangalore, are herewith enclosed for kind reference.

1397/36 — 3.9.36

Enclosure to GJ. 235
35.36

4 SEP 1936 26.8.36

Judgment in Cement Case
(Appeal No 105/35 ...
on the file of Sessions
Judge Mysore)

Subd
3/9/36.

Pdl
4/9

IN THE COURT OF THE SESSIONS JUDGE, MYSORE DIVISION.

Mysore, dated 31st July 1936.

P R E S E N T .

C. Abdul Chani, Esq, B.A., B.L., Sessions Judge.

Mysore Criminal Appeal No:105 of 1935-36.

R. Krishna Rao Appellant . . . Accused.

Vs.

Government of Mysore . . . Respondent . . . Complainant.

Appeal against the conviction and sentence passed by the Additional Assistant Sessions Judge of Mysore, under Sections 409 ~~and~~ or 381 I.P.C. in Sessions Case No. 2 of 1935-36.

Judgment.

1. The appellant has been convicted by the Additional Assistant Sessions Judge of Mysore for breach of trust, or in the alternative, of theft, of two consignments of cement booked to the address of the Executive Engineer, Mandya. The appellant had already preferred an appeal ~~in respect of~~ relating to another item of cement in respect of which he had committed breach of trust. The appellant was the store keeper in the office of the Executive Engineer at Mandya, and is said to have committed breach of trust, or theft of cement which belonged to Government, and for which the Government eventually paid. ~~He was convicted and~~ Sentenced The appellant has been ~~sentenced~~ to rigorous imprisonment for one year and a half and a fine of Rs.500/- Not only are the convictions ~~was~~ challenged in this appeal, but it is also urged that the sentences are very severe, particularly when they are ordered to run consecutively; ~~and~~ the learned Additional Assistant Sessions Judge is said to have practically included in the sentences the punishment which he would have awarded for the charge of forgery of which the appellant has been acquitted.

In 2. In the memorandum of appeal several grounds have been included which are not pressed before me, apparently because the same grounds had been urged in the previous appeal and had been decided against the appellant. About the only ground that was pressed before me is that the Executive Engineer had not placed an order for the two consignments in respect of which the appellant had been convicted, and had not received the consignments to his possession. The Executive Engineers in charge of Mandya Division, no doubt, deposed that they had not placed any order for the two consignments in question. They also deposed that they had not received in their possession the cement that was consigned to their addresses. Under these circumstances, it is urged on behalf of the appellant that there could be no entrustment of the cement to the appellant, when the Executive Engineers themselves were not in possession of the cement. As regards the alternative conviction for theft, it is urged that theft is an offence against possession and, when the Executive Engineers had no possession of the cement, there can be no theft at all. Another ingenious argument advanced in this case is that the appellant ordered for the cement in the name of the Executive Engineer, benami for himself. Such conduct may be reprehensible, and whatever the morality of it, it does not make the appellant criminally responsible. I may, however, point out that this plea of benami is something new which the appellant himself did not choose to advance in the lower court. His statement before the lower court is that he had nothing to do with the consignments and never handled the cement, or the Railway Receipts. I think it is not open to him now to weave out an argument that the goods were ordered by himself, though in the name of the Executive Engineer, and that he intended to pay for the goods and treat them as his own. There is abundant material on record to show that 200 bags of cement were sent to the address of the Executive Engineer and were received at the Railway Station at Mandya on 27-1-34 and 19-2-34 respectively. There is also material on record to show that these consignments were received, not upon any genuine

order placed by the Executive Engineer, but on an order which was forged in one of the communications sent to the Firm which despatched the cement. In regard to the first consignment, it was received on 27-1-1934. The appellant took a proper delivery of the cement from the Railway Authorities even before the Railway Receipts were endorsed in his favour ~~of the appellant~~. The appellant was the Store Keeper in the Executive Engineer's Office, and was in the habit of receiving the consignments booked to the Executive Engineer. It is, perhaps, on this account that the Railway Authorities delivered the goods to the appellant, on the strength of his assurance that he would get the Railway Receipt endorsed by the Executive Engineer the next day. We are not concerned with the correctness, or otherwise, of the action on the part of the Railway Authorities. The fact remains, however, that the appellant did receive the cement. The wagons containing the cement were not unloaded, but it was rebooked by the appellant in his own name to a merchant in Mysore, who received the goods and paid the appellant the price of the cement. Though, in the lower court, the appellant denied having handled the cement, or the Railway Receipt, yet, in this appeal before me, there has been no denial, probably because there is overwhelming oral and documentary evidence to show that the appellant did receive the consignment and rebooked it to a merchant in Mysore. The next day the appellant got the Railway Receipt Exhibit P17 endorsed in his favour by the accountant of the Office.

3. The next consignment was of two hundred bags, as per Railway Receipt Exhibit P20. It arrived at Nandya on 19-2-34. Even before its arrival at Nandya, on 15-2-34, alone the appellant had prepared a consignment note Ex.P21 booking the same cement to Mysore. Exhibit P27 is the connected Railway Receipt. It was endorsed and given to P.W.8 who took delivery in Mysore as purchaser. Railway Receipt Exhibit P20 was endorsed by the appellant himself

The point for consideration now is whether in view of the fact that the Executive Engineer had not placed an order for the cement in question, what offence, if any, the appellant has committed? It was urged before me that Exhibits P7 and P8 disclosed that the appellant himself had paid Rs. 1376-0-0 to the Bank of Mysore, in respect of some previous consignments, for which the Firm had sent in bills for payment. On this basis it is urged that the appellant was ordering the cement for himself and was paying the price himself. though he ordered the goods in the name of the Executive Engineer. This is another nature of the transaction ~~of the transaction~~ that has been pressed before me. I may point out however, that Exhibits P7 & P8 relate to some previous transactions with which we are not concerned at present. If, as a matter of fact, it had been shown that, in respect of consignments in dispute, the appellant had paid the price, then the contention of the appellant could be seriously considered. It is proved, beyond doubt that the Government ~~were made to pay for the two consignments~~ in question eventually. There are other circumstances in the case to show that though the Executive Engineer himself did not place the order for the cement, yet the consignments were intended for the Executive Engineer himself and not meant for the appellant Exhibits P64, 65, 66 and 67 disclose that, out of the imprest amount with the appellant, he has paid the clearing, carting, an unloading charges of the two consignments. He had incurred no such charges at all, but had prepared those vouchers, and apparently misappropriated the amounts therein in order to make it appear that the cement was received in the stores of the Executive Engineer's Office. This is further apparent from the fact that by the consignments are entered in the stock register on the dates of receipt. Exhibits P3 and P4 disclose that the Executive Engineer paid the prices of these consignmen through the Bank of Mysore. Exhibit P61(a) and 61(b) disclose that these consignments have been entered in the Measurement Bo It is apparent, therefore, that, though the cement was not brough to the Store room at all, yet entries were made in the several

books of the office to make it appear that the cement was actually received in the Executive Engineer's store room and was eventually utilised for the work in the Mandya Division.

4. In this Court, it is not denied that the appellant took delivery of the cement in question from the Railway Authorities. The plea is that he received it as his own property - a plea which cannot be sustained on the material on record in the case, and particularly on the plea of the appellant in the lower court that he never handled the goods. The Railway Authorities, apparently, delivered the goods to the appellant for the reason that he was the Stores clerk in the Engineer's Office. He was the person who usually came to receive the goods consigned to the Executive Engineer. The first Railway Receipt Exhibit P17 was endorsed by the Accountant of the Office, while the second one Exhibit P20 was endorsed by the appellant himself. It is apparent, therefore, that the Railway Authorities delivered the goods to the appellant, not in his personal capacity but as the agent or servant of the Executive Engineer. Possession of the servant is possession of the master. The appellant also received it as agent or servant of the Executive Engineer, in as much as, he entered the receipt of the goods in the Stock Register and also got up documents to show that the unloading, clearing, and carting charges had been paid out of the imprest in his hands. It is quite clear, therefore, that though the Executive Engineer did not place an order for the cement, the consignments were meant for him, and were in fact received by the appellant on his behalf. The Executive Engineer may depose that he never got the possession of the cement. This, in a literal sense may be true, but in the legal sense, the goods were taken by the appellant on his behalf. There is nothing inconsistent in this. Simply because the Executive Engineer did not place an order, it cannot be argued that the goods are not his. A Firm

may send the goods on an order placed by somebody else, or a person may send goods to another, as a gift, without the latter's knowledge. In each case, the goods are meant for the consignee and a third person, by misappropriating such goods, cannot say that the goods were not in the possession of the consignee, that he had not committed any offence. The appellant, by his own acts in entering the goods in the Stock Register, and in getting up documents to make it appear that th carting and unloading charges etc had been paid, has shown beyond doubt that the consignment which were booked to the Executive Enginee were received by him as the Store Keeper employed in the Office of th Executive Engineer. His dishonest intention is apparent from his conduct and his ~~management~~ subsequent acts. If he enters the goods in the Stock Register and makes payments out of the impreat(o at least, makes it appear that he has so paid), and eventually gets the department to pay for the goods, it can easily be inferred that, at the time the appellant took delivery of the goods, he had a dishones intention. The cement received was in the constructive possession o the Executive Engineer, and the appellant, by booking it to Mysore and mi appropriating the proceeds has committed criminal breach of trust ur Section 409 I.P.C. In respect of the consignment of 29-1-34, deliver had been given to him before the Railway Receipt was endorsed. This was in trust, and as the appellant was the Store Keeper. Even if a different view be taken the goods which were consigned to the Executive Engineer were taken by the appellant and sent to Mysore. This would amount to theft. It is on account of this that the Additional Assistant Sessions Judge has convicted the appellant in the alternative, for offences under Sections 409 or 381 I.P.C. In the result, therefore, the convictions are correct, and I see no reason to interfere, and as regards the sentences, I may state that Criminal breach of trust by a public servant is punishable with transportation for life. The appellant was the Store Keeper entrusted with the safe custody of the goods in the Stores. He was paid for that work. When such a man abuses the trust placed in him, the sentences in question are certainly not severe. There are two items of cement misappropriated by the appellant, and so the two sentences are ordered to run consecutively. The convictions

and the sentences are upheld and the appeal is dismissed. I may add, however, that the learned Additional Assistant Sessions Judge was not competent to discuss the question whether the Sessions Judge, could or could not, when holding a trial to be illegal, order a retrial of the appellant even for the offence of forgery ~~for~~ which he had been acquitted, in the previous illegal trial. If the party was aggrieved he should have approached the High Court ~~on~~ in that matter. It was not open to the Additional saistant Sessions Judge, I believe, to go into the question, even if the decision of the Sessions Judge on the point was wrong, or doubtful.

Dictated to the Stenographer and pronounced in open

Sd/- C. Abdul Ghani.
Sessions Judge.
31-7-1936.

C O P Y.
Cghani
Sessions Judge.

Sales

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

17/6

Dated, Bangalore, 16th 17 September 193 6

No. P 1922
Law 205-36-9

From

The *General Secretary to the Government of His Highness the Maharaja of Mysore.*

To

The District Magistrate,
Mysore District.

Sir,

Subject:- Mandya Cement defalcation case. Withdrawa of other pending charges.

With reference to your letter No.G.3. 235/35-36, dated 28th August 1936 on the above subject, I am directed to stat that, under the circumstances explained, Government have no objection to the withdrawal, as recommended by you, of all the cases against Krishna Rao still pending either before the Magistrate at Mandya or before the Assistant Sessions Judge in Mysore, except one or two of those in which it may be possible to fix the liability of the receivers of cement.

I have the honor to be,
Sir,
Your most obedient servant,

Sd/- M. Venkatesa Iyengar,
General Secretary to Governmen

Copy of the foregoing is forwarded with compliments to the Public Prosecutor, Mysore.

By Order,

General Secretary to Government.

P 1922 Law 205-34-9

176

17-9-36

To

The District Magistrate, Mysore.

Subject: Mandya Cement defalcation case. Withdrawal of other pending charges.

Sir,

With reference to your letter No. G.3-235/35-6 dated 28th August 1936 on the above subject, I am directed to state that, under the circumstances explained, Government have no objection to the withdrawal, as recommended by you, of all the cases against Krishna Rao still pending either before the Magistrate at Mandya or before the Assistant Sessions Judge in Mysore, except one or two in which it may be possible to fix the liability of the receivers of cement.

I have &c.,

1579

for General Secretary to Govt.

No. P 1923 17-9-36

Copy to the Public Prosecutor, Mysore.

179 414/836

OFFICE OF THE DISTRICT MAGISTRATE,
MYSORE DISTRICT.

No. G1-904/36-7
Encl.

Dated, Mysore, the 19th January *1937*

Law 205-34-10

FROM

T. G. RAMA IYER, ESQ., B.A.,
District Magistrate, Mysore District.

To

M. VENKATESA IYENGAR, Esq., M.A.,
Secretary to the Government of Mysore,
General Department, Bangalore.

SIR,

GENERAL SECRETARY. 21 JAN, 1937 BMR

Services of Public Prosecutor for the conduct of 5 cases of Cement defalcation to fix the liability of receivers.

Ref no

Referring to your letter No.P.1922/Law. 205-34-9 dated 17th September 1936, regarding the withdrawal of certain charge sheets pending before the Special First Class Magistrate, Mandya relating to Mandya Cement defalcation, I have the honour to state that 11 charge sheets were withdrawn and the remaining 5 were selected for being pressed with a view to fix the liability of the receivers. These five cases were transferred to the file of the Special First Class Magistrate, Mysore. C.C.Nos.231, 305 and 306 were ordered to be clubbed together and tried jointly as the acts of criminal misappropriation were committed by the accused in the course of twelve months. So, there will be 3 cases in all to be proceeded against the accused R.Krishna Rao, before the Special First Class Magistrate, Mysore. It is reported by the Special Magistrate that the said accused R.Krishna Rao,prisoner No.9912 in the Central Jail, Bangalore was produced before him on the 15th, that he has been remanded to the Sub Jail, Mysore, and that the cases are posted for hearing on 25th January 1937. In view of the fact that the Police Officers who investigated the case are not readily available to acquaint the connected records to the Prosecuting Inspector, and owing to complicted difficult and important nature of these cases, I recommend that sanction may kindly be accorded to utilise the services of the Public Proseecutor who is fully conversant with the details of

these

these and other connected cases relating to cement defalcation. I request the favour of very early orders in the matter.

I have the honour to be

Sir,

Your most obedient servant,

Ramachandra

for DISTRICT MAGISTRATE,

Mysore District

S. Ramachandra Rao

Abstd

G. R. S. App. F VI—G 2]

SUBJECT ..... 30/1 .....

.....

.....

Diary. No. of letter replied to.....

General and Revenue Secretariat

( )

the *193*

Date of issue.....22-1-37.....193

Signed by ...Mr. PKR.

Section Laws

File No. 205-34

Serial No. 11

Proceedings of the Government of His Highness the Maharaja of Mysore.

May this be—

(i) printed ?

(ii) treated as a standing order ?

(iii) published in the Gazette, English Part ?

(iv) translated ?

(v) placed at the disposal of the press ?

(vi) published in the Gazette, Kannada Part ?

Read— Letter no. J. 1-902/36-, from the D.M., Kolar dated 19th Jan'y '37, stating that 11 charge sheets were withdrawn and the remaining 5 were selected for being pressed with a view to fix the liability of the receivers, ~~Order thereon—No.~~ that these five Cases were transferred to the file of the Special First Class Magistrate, Mysore, and which are posted for hearing on 25-1-37, and ~~Soliciting~~ ~~Recommending~~ that for the reasons stated in the letter, Soliciting Sanction of Govt. to utilize the Services of the P.P., Mysore for conducting these cases

Soliciting

Order.

1&2

Sanctioned vide P4629-5

Gen: Secy

To

1) The D.M., Mysore
2) The P.Pr, Mysore
3) The Comptr to Govt

PROCEEDINGS OF THE GOV ERNMENT OF HIS HIGHNESS

THE MAHARAJA OF MYSORE.

R e a d:-

Letter No.G.1.902/36-37 dated 19th January 1937 from the District Magistrate, Mysore, stating that 11 charge sheets were withdrawn and the remaining 5 were selected for being pressed with a view to fix the liability of the receivers, that these five cases were transferred to the file of the Special First Class Magistrate, Mysore, and which are posted for hearing on 25th January 1937 and soliciting for the reasons stated in the letter, sanction of Government to utilise the services of the Public Prosecutor, Mysore, for conducting the cases.

Order No. P4629-31 Law 205:34-1

Dated, Bangalore the 22nd January 1937.

S A N C T I O N E D.

BN Ramakrishnaiya

For General Secretary to Government.

To

The District Magistrate, Mysore District.

The Public Prosecutor, Mysore.

The Comptroller to the Government of Mysore.

Aga/4.

From

The Public Prosecutor
Mysore Divisions
Mysore.

To

The General Secretary to
the Government of H.H. The Maha
Mysore. Bangalore

Dated 2.2.37

Despatched —oo—

Received GENL 5 FEB. 1152

General No. 975-

~~No.~~

Enclosure No.

Sir,

I have the honour to state that
five charge sheets in the cases noted
the margin were received by hand
to the Court of the Special First Class
Magistrate, Mysore. Accused R
Krishnadeva who is now a convict
in the Mysore Sub-jail had been brou
up to Court.

In one of the five charge sheets Sing
Iyengar and Krishnaswamy are al
mentioned as accused. The question
Prosecuting Singra Iyengar (The Accused
and Krishnaswamy (The Typist) will be
discussed with the Investigating Offic
Mr Nanjla and the final orders of th
Government will be obtained in due
course.

The cases are provisionally posted
the 6th instant. On that day, the case
against R. Krishnadeva only will be
grouped together and taken up on

4592/36

WD 0186—GPB—80,000—26-9-36

193 1936

From

The Public Prosecutor
Mysore Division
Mysore

To

The General Secretary to the
Government of H. H. the Maharaja
of Mysore, Bangal

Dated 6-2-1937

Despatched

Received

General No. 1000

No.

Enclosure No.

GENERAL SECRETARY.
8 FEB. 1937
PM

BKR

C.C. Nos 211-214 215/36-37
C.C. No: 212/36-37
C.C. No. 213/36-37
Irwin canal Cement defalcation
Cases: on the file of the Special
First class Magistrate, Mysore

Sir,

I have the honour to state that the above noted cases are now arranged to be tried in the order viz. 213/36-37, 211. 214 & 215/36-37, and 212/36-37. In the last case besides the Store Keeper the Head accountant and the Typist are also included as accused. It is not yet decided whether

The Court should proceed against accused 2 and 3 also

8) The records relating to these cases have not yet been received from the Court of the Assistant Sessions Judge, Mysore. Lists of witnesses were filed today in CC No. 213 and 211, 214 & 215.

C.C. No. 213 will first be enquired into on 8.3.37

I have the honour to be

Your most obedient servant

V. Ramachandra Rao

Dy. Superintendent

No. P 515

164

22nd February 1937.

Cement Defalcation case.(C.C.214 to 215 of 36-37) .... on the file of the Spl. 1st Class Magistrate - Tuticorin

Dear Mr. Ramaswamy,

Regarding the above cases on the file of the Special First Class Magistrate's Court, I shall thank you to send me a copy of the charge sheet in any one of the cases, as in connection with another question, it has become necessary to know the names of the witnesses to be examined in these cases. I presume that the evidence to be adduced in these cases will enable the Government to fix the liability of the receivers.

I should also like to know if in consultation with the Investigating Officer, you have come to any decision whether the case against the accountant and the typist should be pressed.

The matter may kindly be treated as urgent.

Appendix F G—1]

SUBJECT .....

.....

.....

Diary No. of letter replied to .....

Section

File No.

Serial No.

No P-5115/ Cement Defalcation Case (c.c. 214 & 215 of 36-37)

To

Dear Mr. Ramaswamy,

General and Revenue Secretariat

( )

the *193*

Date of issue 22/2/37

Signed by Jm B.K.D

Regarding the above cases on the file from Special 1st class Magistrate's Court, I shall be glad if you will send me a copy of the charge sheet in any one of the cases, as in connection with another question, it has become necessary to know the names of the witnesses to be examined in those cases. I presume that the witnesses to be examined in those cases, will include the Chief Officer, the liability of the Receivers.

I should also like to know if in consultation with the Food Inspecting Officer, you have come to any decision

List of enclosures .....

Copied by .....

Examined by .....

90

regarding whether between the case

against the accountant and the by-pass

should be pressed

no. no. [illegible] Kindly

I have for acknowledgment your D.O.letter No.P.5115 dated the 22nd instant asking to furnish information about the Cement Defalcation Cases pending on the file of the Special First Class Magistrate, Mysore.

Copies of charge-sheets and some other papers are kept in my office in a box belonging to the Irvin Canal Division. The Head Clerk of the Irvin Canal Division Executive Engineer's Office has locked the box and taken away the key. I shall take the papers out after getting the key from Mandya and send my report to Government on the 27th instant.

The five cases transferred from Mandya are arranged into three cases for purposes of trial. The Accountant and the Typist are implicated in only one case (C.C.No.213/36-37). In other cases they are important witnesses.

I had a consultation with the Investigating Officer on the 18th instant. In his opinion there is not sufficient evidence to press the case against the Accountant and the Typist. Anyhow C.C.No.213/36-37 will not be taken up till the other two cases (4 cases arranged into two) are disposed of.

I must confess that I am not yet in a position to tender a decided opinion about the complicity of the Accountant and the Typist. I shall explain in my report definitely whether the

the charges against them are worth pressing

Yours sincerely,

B.K.Ramakrishnaiya, Esq.,M.A.,LL.B.,
Assistant Secretary to Government
of His Highness the Maharaja
of Mysore, Law Department.
BANGALORE.

Dear Sir,

I am sending herewith copies of Charge Sheets of C. C. Nos. 211, 214 and 215, 212 and 213 on the file of the Special First Class Magistrate, Mysore, together with copies of Witness Lists and documents, as desired in your D. O. letter of the 22nd ultimo.

Before taking up with the receivers it is necessary that these cases should be enquired, tried and disposed of. There will not be much difficulty in securing the conviction of the Store Keeper. The case of the Accountant and the Typist does present some difficulty. They were not in the dock in the cases I conducted before the Assistant Sessions Judge. That is the reason why I am unable to tender a decisive opinion re: their complicity. But from my knowledge of the cases I can say that the active connivance of the --- Accountant and the conscipus co-operation of the Typist facilitated the systamatic embezzlement of Government Stores. It requires close study to say whether there is not sufficient evidence to charge them for abetment.

I learn that the Accountant and the Typist are departmentally dealt with. They are my witnesses in C. C. Nos. 211, 212, 214 and 215 as also in the Civil Suit.

May the Government be pleased to defer the question till

still after the disposal of all the cases. I expect them to be over before July next.

Yours sincerely,

Sb. 23
34-5

C.C. 211/36.7
of S FM. Mysore
214
215

Complainant VS. Accused/

Government Krishna &o.

Section 409 I.P.C.

The accused was working as a Store Keeper in the Office of the Executive Engineer, G. V. Irwin canal project division, Sandur and as in such capacity of public servant, he was among other things entrusted with the custody of articles belonging to Government pertaining to stores.

On receipt of a report of the Executive Engineer, of the above said office, on 23-9-[illegible] that the accused had misappropriated 1,335 bags of cement valued at Rs 4505/10/- in the

was taken on file and duly investigated.

Invetigation has disclosed that the accused has misappropriated ~~300~~ 300 bags valued @ Rs 1125/- @ Rs 3/12/- per bag, by removing them from out of the stores between 11.7.34. to 14.9.34 and by disposing of them of to P.Ws. at Mysore.

Complainant vs. Accused

Government . Krishna Rao.

409 IPC

The accused was working as store-keeper in the office of the Executive Engineer, No. V Division, P.W. Works, Vijayawada and as in such capacity of public servant, he was among other things entrusted with the custody of articles, belonging to Govt. pertaining to Stores.

On receipt of a report of the Executive Engineer, of the above office on 23-9-56, that the accused had misappropriated 1581 bags of cement valued at Rs 4105/10/- in the aggre-

P.T.O.

Complainant Vs. Accused.

Government Krishna [illegible]

Section 409 I.P.C.

The accused was working as store keeper in the office of the Executive Engineer, O. V. I.C. [illegible] Division Kandyala, and as such in such capacity of a public servant, he was among other things, entrusted with the articles belonging to Government pertaining to stores.

On receipt of a report of the Executive Engineer, of the above said office, on 23-9-54, that the accused has misappropriated 1338 bags of cement valued at Rs 4505/- in the aggregate

from the office stores between 16-7-32 and 2[illegible]-9-34, a case was taken on file and duly investigated.

In the course of the investigation, it is ~~ascertained~~ that the accused with Accountant and the Typist of the said office, committed several offences of misappropriation, forgery and falsification of accounts, in respect of cement belonging to the Governmer

The following item has been selected as the subject matter of this charge sheet for an offence under section 409 I.P.C.

1) Indent No. 2427 dated 26-5-34 for 920 bags against which a consignmen of 460 bags received on 16-6-34; of which 220 bags were disposed to M.C.L. Pathi at Mysore.

The cost of the above said item of misappropriation is Rs.825/- at Rs 3-12-0 per bag.

1(C 235
34

Complainant VS. Accused.

Government K. Krishna Rao. CC 212/36-7 of SFM Mysore

Sec. 409 I.P.C.

The accused was working as Store-keeper in the Office of the Executive Engineer, No. V. Division, (Irwin Canal Works) Mandya, and as in such capacity of public servant, he was among other things, entrusted with the custody of articles, belonging to Govt., pertaining Stores.

On receipt of a report of the Executive Engineer of the above office on 23/9/34 that the accused had misappropriated 1,335 bags of cement valued at Rs 4505/10/- in the aggre-

gate, from his office stores between 16-7-32 and 22-9-34, a case was taken on file and duly investigated

In the course of the investigation, it is disclosed that the accused with Accountant and the Typist of the said office, committed several offences of misappropriation, forgery and falsification of accounts, in respect of cement belonging to the Govt at different periods.

The following items have been selected as the subject matter of this charge sheet for an offence under sections 409 I.P.C.

(1) Indent No. 1565 dated 28/3/33 placed with the firm of Messrs B.V. Narayanaswamy & Co., Bangalore for 60 bags of cement. Out of this the accused has disposed of 40 bags of cement to Rajaputana Trading Co., at Mysore on 1-4-33;

(2) Indent No. 1763 dated 18-4-33 placed with the same Firm for 300 bags of cement. Out of this, the accused has disposed of 80 bags of cement to Mr. G.K.D. Barmiah at Mysore on 3-5-33 and 8-5-33.

The cost of the above said items of misappropriation is Rs 450/- at Rs 3/12/- per bag.

Inspector of Police,
Mandya Taluk.

IN THE COURT OF THE SPECIAL 1ST CLASS MAGISTRATE,

[illegible],

C. C. No. 217/36-37

List of witnesses to be examined on behalf of the prosecution.

Mr. C.Srinivasa Murthy, Accountant.
Controller's Office, Bangalore.

2. Mr. A. Subba Rao, Cashier,
Office ofthe Executive Engineer,
Lower Channel division, Mysore.

3. Mr. V.Singra Iyengar, Superintendent,
Comptroller's Office, Bangalore.

4. Mr. N. Subba Rao, Executive Engineer,
Bangalore.

5. Mr. T.Ramaswamy Iyengar, B.A., B.L.,
Sub Engineer, Kolar Division, , Kolar.

6. Mr.S. Narayana Sharma,
Over Seer, I.C. Division, Mandya.

7. Mr. K. R. Srinivasan C/o. K. Pariah,
Proprietor, K.V.Narayanaswamy & Co.,
Bangalore City.

8. Mr. M.S. Covalich, Clerk, Bank of Mysore,
Bangalore.

9. Mr. C. Ramakrishnabhapathy,
Postal Clerk, Mandya.

10. Mr. M. Ramachandrich,
Station Master, French Rocks (with the Vehicle register, Loading and Unloading Tally book and goods delivery book of Mandya for the periods, 3-4-38, 2-5-38, 8-5-38 and 12-7-38)

11. K.V. Ramachandra, Goods Clerk,
Bangalore (with the Vehicle register, Loading and Unloading Tally book and delivery book of Mysore Railway station for the periods 3-4-38, 4-5-38 and 7-5-38

12. Ramabashiviah, Goods clerk, Mysore (With the Vehicle register, Goods delivery Book and Loading and Unloading Tally book of Mysore Railway station for the period 12-7-38)

13. Mr. C. T. Narasimha Iyengar, Executive Engineer,
Irwin Canal Division, Mandya.

14. C.T. Krishnaswamy, Clerk, Office of the
Executive Engineer, Mandya.

15. K. N. Ramaswamy Iyengar,
Clerk, Office of the Sub Division (I.C. Division No. II)
Mandya.

16. Mr. G.V.D. Parmial, Hardware merchant,
Hodpet, Mysore.

17. Mr. Virdi chand. Rajamane Trading Co.,
Mysore. [illegible]

List of witnesses to be examined on behalf of prosecution.

C. C. No. 212/36-37.

19. Mr. Sukalchand, Rajputana Trading Co., Mysore.

20. Mr. Punnam chand, Ado- -do-

20. Puttaswamy, Attender, -do- -do-

21. Abdul Aziz, Carting Contractor, C/o. Rajputana Trading Co., Mysore.

22. Mahmed Ibrahim, Carting Contractor, C/o. C. . . Purmiah, Hardware merchant, Mysore.

23. Mr. Hakim Mahmed Ghouse, Hardware merchant, Lodpet Mysore.

24. Mr. S. Govinda Rao, Superintendent, Comptroller's Office, Bangalore.

25. Mr. V. T. Srinivasan, Auditor, Mysore Railways, Mysore.

26. ~~Auditor of the Comptroller's Office and~~

27. ~~Deputy Comptroller,~~

who inspected the Divisional accounts of May 1933 in November 1933.

28. Mr. B. Ramaswamy Iyer, Inspector of Police, Koppa Taluk, C/o. The District Superintendent of Police, Kadur District, Chikmagalur.

29. Mr. M.H. Murulla, Inspector of Police, Anekal., C/o. the District Superintendent of Police, Bangalore. District.

Complainant VS. Accused.

Government 1. Krishna Rao
2. Singra-
Iyengar
3. C Krishna-
swamy.

Sections 409-[illegible] and 477 A [illegible] I.P.C.
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1. The first accused was the Store Keeper, the second accused was the Accountant and Manager and the third accused was the Typist of the office of the Executive Engineer, No.V Division P.C. Works, Bangalore.

On receipt of the report of the Executive Engineer of the above the office on 23-9-34, that [illegible] misappropriated 133[illegible] bags of cement from his office stores bet-

between 16-7-32 and 22-9-34, a case was taken on file and duly investigated.

During the cours of investigation it is ascertained that in order to ~~misappropriate~~ commit misappropriation of cement bags supplied by the Firm os Messrs B.V. Narayanaswamy Co., Bangalore. to the said office bogus indents and bogus correspondence was being resorted to by the above said accused with the said firm. In the name of the Executive Engineer and false entries were also being made in the registers.

4) Regarding this charge sheet, a bogus indent No. 2624 was placed on 18-6-34. in the name of the Executive Engineer for the supply of 820 bags of cement ; and out of the consignment received on 27-6-34, 440 bags are despatched to Mysore the very day for disposal.

It is found that all the three accused are concerned in the commission of the said offences. Hence this Charge sheet.

IN THE COURT OF THE SPECIAL IST CLASS MAGISTRATE,

MYSORE.

C. C. No. 213/36-37.

Complainant VS Accused.

Government .. Krishna Rao. & others.

List of witnesses to be examined on behalf of the prosecution.

1. Mr. S. Narayana Sharma Over Seer,
Irwin Canal Division, Mandya.

2. Mr. M. Subba Rao, Executive Engineer,
Bangalore division, Bangalore.

3. Mr. M.S. Sumath Iyengar,
Assistant Engineer, Irwin Canals Division,
Cannambally (Mandya Taluk).

4. Mr. K.R. Srinivasan, C/o. K.Ramiah, Proprietor,
M.V.Varadarajaswamy & Co., Bangalore City.

5. Mr. M.S. Gopaliah, Clerk,
Bank of Mysore, Bangalore.

6. Mr. C. Ramaswasabhavathi,
Postal Clerk, Mandya.

7. Mr. N. Ramachandriah,
Station Master, French Rocks.
(To come with the Vehicle register, Loading
and Unloading of Mandya Railway station
for the period from 27-6-34 to 30-6-34).

8. Mr. Narbashiviah, Goods Clerk, Mysore.
(To come with the Vehicle register, Loading
and Unloading Call Book of Mysore Railway
station for the period from 27-6-34 to 30-6-34).

9. Mahmed Ibrahim, Carting Contractor, Mysore,
C/o. Mr. C.M.D. Ramiah, Hardware merchant, Mysore.

10. Mr. C.T.Narasimha Iyengar, Executive Engineer,
Irwin Canals Division, Mandya.

11. Mr. M. Singra Iyengar,
Superintendent, Comptroller's Office,
Bangalore.

12. L.V. Rajiengar, Accounts Clerk,
Comptroller's Office, Bangalore.

13. Mr. A. Subba Rao, Cashier,
Executive Engineer's Office,
Lower Channel division, Mysore.

14. Mr. C.M.D. Ramiah,
Hardware merchant, Podpet, Mysore.

15. C.V. Krishnaswamy, Typist,
Executive Engineer's Office, I.C. Division,
Mandya.

(Contd).

C.C. No. 113/36-37.

List of witnesses to be examined on behalf the prosecution. (Contd.).

16. Mr. R.V. Krishna Iyengar, Head Clerk,
Executive Engineer's Office,
I.C.Division, Mandya.

17. Mr. A. Venkoba Rao, Sub Over Seer,
Office of the Executive Engineer, IC.Division,
Mandya.

18. Mr. A.V. Dhanakoti Naidu, Sub Over seer,
Office of the Executive Engineer, Kolar.

19. Mr. S. Godina Rao, Superintendent,
Comptroller's Office. Bangalore.

20. Mr. V.T. Srinivasan. Auditor,
Mysore Railways, Mysore.

21. Mr. B. Ramaswamy Iyer,
Inspector of Police, C/o. District Superintendent
of Police, Kadur District, Chikmagalur.

22. Mr. M.M. Nurulla, Inspector of Police, Anekal.
C/o. District Superintendent of Police,
Bangalore District, Bangalore.

K. B. L. Pathy 484 bags

IN THE COURT OF THE SPECIALIST CLASS MAGISTRATE, Mandya

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C. C. Nos. 211, 214 & 215 of 1936-37.

Complainant	Vs.	Accused.
GOVERNMENT		R. VISHWA RAO.

List of witnesses to be examined on behalf of the prosecution.

1. Mr. S. Narayana Sharma, Over Seer, Irwin Canal Division, Mandya.

2. Mr. N. Subba Rao, Executive Engineer, Bangalore Division, Bangalore.

3. Mr. M. C. Ramnath Iyengar, Assistant Engineer, Irwin Canal Division, Channanahally (Mandya Taluk).

4. Mr. K. L. Srinivasan S/o. Ramiah, Proprietor, Messrs B.V.Narayanaswamy & Co., Bangalore City.

5. Mr. A. S. Gopaliah, Clerk, Mysore Bank, Bangalore.

6. Mr. C. Kanakasabhapathi, Postal Clerk, Mandya.

7. Mr. A. Ramachandriah, Station Master, French Rocks.

8. T.Sambashiviah, Goods Clerk, Mysore.

9. Mr. A. S. Srinivasa Rao, Station Master, Lawlande.

10. D.C. Rajiengar, Accounts Clerk, Comptroller's Office, Bangalore.

11. Mr. M. Singra Iengar, Superintenent, Comptroller's Office, Bangalore.

12. Mr. A. Subba Rao, Cashier, Executive Engineer's Office, Lower Channel Division, Mysore.

13. Mr. C. V. Narasimhengar, Executive Engineer, Irwin Canal Division, Mandya.

14. C. Srinivasaswamy, Typist, Office of the Executive Engineer, Irwin Canal Division, Mandya.

15. Mr. H. Krishna Iengar, Head Clerk, Office of the Executive Engineer, Irwin Canal Division, Mandya.

16. Mr. T. Krishna Murthy, Head Clerk, Office of the Executive Engineer, Chitaldrug.

17. Mr. A. C. L. Nathu, Hardware merchant, Mysore.

List of witness to be examined on behalf of the prosecution in C. C. Nos. 211, 214 & 215/26-37

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18. Narayanaswamy, Carting Contractor, C/o. Mr. M. C. L. Pathi, Hardware merchant, Mysore.

19. A. S. Padmaraiah, Carting Contractor, C/o. Mr. M. C. L. Pathi, Hardware merchant, Mysore.

20. Narayana Rao, Clerk C/o. Mr. M.C.L. Pathi, Hardware merchant, Mysore.

21. Station Master who was at Seringapatam on 2-6-1934 (with the Phenix Vehicle register, Loading and Unloading Tally Register and the Delivery book of 2-6-34).

22. Syed Amir, Cartman, Mandya.

23. Sheik Davood, Cartman, Mandya.

24. Siddiah -do- -do-

25. Venkatappa -do- -do-

26. Mahmed Hussain -do- -do-

27. Ahmed Sab, -do- -do-

28. Sheik Mohideen, Watchman, Office of the Executive Engineer, Irwin Canal Division and a.

29. Mr. M. Venkoba Rao, Sub Overseer, Office of the Executive Engineer, Irwin Canal Division, Mandya.

30. Mr. A.V. Dhanakoti Naidu, Office of the Executive Engineer Kolar Division, Kolar.

31. Mr. V. T. Srinivasan, Auditor, Mysore Railways, Mysore.

32. Mr. C. Govinda Rao, Superintendent, Comptroller's Office, Bangalore.

33. Mr. B. Ramaswamy Iyer, Police Inspector, Kopa Taluk, Kopa. C/o. District Superintendent of of Police, Kadur District, Chikkamagalur.

34. Mr. M.M. Murulla, Inspector of Police, Anekal Taluk Anekal. C/o. The District Superintendent of Police, Bangalore District, Bangalore.

IN THE COURT OF THE SPECIAL IST CLASS MAGISTRATE ,

Mysore.

List of documents to be exhibited in the case.

(Common for all the five cases).

Sl. No.	No. of the Ext. of S.F.C.M. Mandya.	Particulars of the Ext.
1.	98 & 99	Annonymus petition dated 18-9-34 from one Mr. Venkatanarasimhachar, to the address of the Deputy Chief Engineer, Bangalore; allegation on both store keeper and Accountant re. misappropriation of cement bags in the divisional store, Mandya. (Letter with cover
2.	100 & 101	Annonymous petition without name and and date to the address of the Executive Engineer, Mandya Re. allegation as above on the same parties received from Mandya post office on 21-9-34. (Letter with cover).
3.	D.44	Statement showing counting of stock articles in the divisional stores, by the E.E. on 3-9-34 with the postings of Halfyearl transactions of stock in the stores from January to Aug. 34.
4.	289 of A.S.J.	Balance return of stock articles of the division for the half year ending 30-6-34 along with counted figures as submitted to Comptroller on 18-9-34.
5.	290 of -do-	Statement showing the difference of stock balances between countedfigures and 'A' Form balance (account) for the half year ending 30-6-34, for submission to C.F. on 18-9-34
6.	291 of -do-	Office draft of covering letter put up by S.F.C.M. for submission of the above, to C.F. passed by Accountant and E.E.
7.	52 of S.F.C.M.	Register of daily issues of stock from the divisional stores from March 1934 to Septr. 1934 maintained by Al.(a) E.F's note to Accountant. b) Counted on 22-9-34 308 cement bags in the stores. Postings of May and July 1934; corrections.
	129	Indent Book with Indent Nos. 90 and 91 for sending 20 bags by S.O. M. Venkoba Rao.
9.	108	Indent No. 90 dated 5-7-34 sent to Sub Division; altered the figure 10 to 110 b Al inserting 1 behind 10.
10.	113	Invoice relating to above for 10 bags of cement altered to 110.

(Contd.

List of documents to be exhibited (Common for all 5 cases).
(Contd./.

11.	112	Acnkowledgment receipt sent by S.O. Venkoba Rao for 10 bags of cement with a note to clerk.
12.	109	Indent ~~xxxxxx~~ No. 91 dated 5-7-34 sent by -do- for 20 bags; altered to 120 bags by A1; in words twenty only.
13.	116	Acknowledgment receipt by S.O. Venkoba Rao for 20 bags in words.
14.	117	Invoice No. 91 dated 5-7-34; one Malle-Gowda received 20 bags on 6-7-34.
15.	111	Indent M6 of Mr. Dhanakoti (S.O.) dated 13-7-34 for 6 bags sent to divisional stores; figure 6 is altered to 36 bags.
16.	130	Indent Book of -do- with counterfoil for 6 bags.
17.	114	Invoice dated 14-7-34 for 6 bags of cement indo corroboration to the figures in the counter foil.
18.	192	Written complaint given to the Police Inspector, Mandya; typed letter dated 23-9-34 with initials of Accountant and E.E.
19.	70 of Addl. Ct. I Case	Statement of daily balances of cement bags in stores from 1-7-33 to 23-9-34 prepared by B.C.P. on 3-10-34 after special Audit being over for submission to C.E.
20.	C.7.	Counting of stock articles in the divisional stores by Mr. S.N. Sharma on 31-12-33 passed by Accountant and E.E.
21.	279 of A.S.J.	Register showing the balance return of half yearly counting of stock for half year ending 31st Decr. 33 submit Comptroller.
22.	280 of -do-	Statement showing the difference of stock balance between the counted figures and the account balance for half year ending 31-12-33 submitted to C.E.
~~22.~~	~~xxx~~	For item cement Accountant's remark :- 'Corr
23.	218	Letter No. 407 dated 27-8-33 from the Execut Engineer, Mandya to the Sub Post Master, Man giving instructions for the delivery of re-gistered and other articles addressed to E.E. Mandya to be delivered to the Accountant Mr. M. Singra Iyengar.
24.	344	Fair copy of the above sent to the Sub Post Master, Mandya.

IN THE COURT OF THE SPECIAL IST CLASS MAGISSRATE,
Mysore.

9.4.34 C.C.No. 214/36-37. 213
140 Bags

List of documents to be exhibited in the case on behalf of the prosecution:-

Sl. No.	No.of the Ext. on the file of the S.J.C.M. Mandya.	Particulars of the document.	Remarks.
1.	213	Memo dated 1-3-34 from the Asst. Engineer Mr. M.C. Sampath Iyengar noting the requirement of 33 Tons of cement bags till June 1934. A 1's note correction of 100 bags to 50.	
2.	214	Memo dated 12-3-34 from the Asst. Engineer Shivahally for the requirement of 100 bags of cement.	
3.	194	Jair ~~Spare~~ copy of letter No. 1625 dated 2/3-3-34 from M.E. Mandya to B.V.N.& Co., for the supply of one waggon cement.	
4.	195	Letter No. 1773 dated 14-3-34from M.E. Mandya to B.V.N. & Co., being an urgent reminder for indent No. 1625 above.	
5.	215	Office copy of letter No. 1773 dated 14-3-34 above.	
6.	58	Letter dated 31-3-34 from B.V.N. & Co., enclosing the R.R. dated 27-3-34; Note :- personally handed over to A1 at Mandya by Mr. K. Ramiah.	
7.	(New)	Credit notes issued in April 1934 towards Railway freight by book adjustment.	
8.	59	Foreign R.R. dated 27-3-34 for 440 bags Waggon No. 8047 - 180 bags and another WaggonNo. 7999 - 260 bags.	
9.	196	Acknowledgment for the receipt of the above R.R. by A1 .	
10.	(New)	Vehicle Register of Mandya Railway Station for 9-4-34.	
11.	-do-	Loading and Unloading Book of -do- -do-	
12.	241	Goods Inward delivery book of Mandya Railway Station. Signature of A1 for having taken delivery of 440 bags on 9-4-34.	
13.	297	Voucher in the handwriting of A1 for having paid 2/8/-for unloading 440 bags at Mandya Railway station on 9-4-34.	
14.	298.	Voucher for 16/8/- by A1 for having carted 440 bags from Mandya Railway station to divisional stores.	
15.	51	Register of Daily receipt of stock maintained in the Executive Engineer's Office, Mandya (CONTD)	

C.C.No. 214/ 6-37.

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List of documents to be exhibited.

16. 57 Measurement book No. 1866 for the collection of stores in the division office.(Page 24).

17. 249 Consignment note dated 9-4-34 in the writing of A1 for booking 150 bags of cement from Mandya to Mysore to 'Self'

18. 250 Risk ote for -do- -do-
Note :- Witness attested by

19. 1 R. dated 9-4-34 for -do- -do- 140 bags to ysore in waggon No. 8947 i.e. in the same waggon.

20. (New) Vehicle register of Mysore Station for 9-4-34.

21 -do- Loading and Unloading Tally Book. do--do-

22. 280 Inward delivery book No. 21 in Mysore Railway stationfrom 26-3-34 to 16-4-34: signature of Narayanaswamy for having taken delivery.

23. 3 Deliver note dated 10-4-34 granted to carting contractor, Narayanaswamy (Gate Pass).

24. 2 Day Book maintained by M.C.L. Pahty from 29-12-33 to 25-10-34. Purchase entries on 17-4-34 - 140 bags at Rs 59/- F.O.R.Mysore, and on 24-4-34 payment of Rs 1285/- being the value of cement and Zinc sheets.

25. 5 Ledger account maintained in the shop of M.C.L. Pathy containing the transactions between A1 and himself.

26. 233 of Asst. Sessions. Postal registered receipt dated 3-4-34 from Bangalore to the E.E. Mandya (From Mysore Bank).

27. 318 Postal registered receipt No. 587 posted at Avenue Road, Bangalore received at Mandya on ## 4-4-34. Signed by A1.

28. 60. Bill dated 31-3-34 for 908-14-0 on 440 bags of cement received from B.V.N. to E.E. Mandya.

29. 61 Bill receipt register in the division Office. B.R. No. 2917 dated 23-4-34.

30. (New) P.W. Serial 163(a) Certificate to be attached with the bill forwarded to the Comptroller for payment.(Old Form)

31. D.63. Form 53 Fl.certificate revised -do- -do-.

32. (New) Comptroller's Requisition book for Bills sent for payment.

33 (New) Stock account current showing transactions of receipt and issue of stock as in Divisional accounts sent to Comptroller.

(Contd)

C.C. No. 214/36-37.

List of documents to be exhibited in the case.

34.	282 of Asst. Sessions.	'A' Form register showing monthly transactions of numerical accounts and balance of stock from Jan34 to Jan 1 35.
		Certified extracts for the payments realised in the Mysore Bank towards the Bills of B.V.". & Co.

IN THE COURT OF THE SPECIAL IST CLASS MAGISTRATE

MYSORE.

C. C. No. 214/36-37.

List of documents to be exhibited in the case.

9.5.36

9-5-36. INDENT NO. 2006 dated 23/24-4-34. 120 Bags

No.	No. of the Ext. of A.E.C.N. Mandya.	Particulars of the exhibit	Remarks.
1.	(New)	Memo dated 22-5-35 10-4-34 in the writing of D.C.E. - - circular orders to Asst. Engineers of Sub Divisions, calling for the requirement of cement bags, to end of June 1934. (Office copy).	
2.	148 of A st. C.C.	Letter No. 955 dated 11-4-34 for -do- -do- (a) Memo reply by A. E. dated 19-4-34 (b) Accountant's Note.	
3.	284 of -do-	Memo put up by D.C.E. dated / 19-4-34 noting 100 bags as balance of cement bags available. (The correct balance would be 903 bags as per accounts) (Initialled by A1).	
4.	81	Indent No. 2006 dated 23/24-4-34 from to D.V . for the supply of 20 Tons of cement.	
5.	82	Office copy of -do- in the writing A1 passed by Mr. . Subba Rao on 23-4-34 as Accountant.	
6.	(New)	Letter dated 29-4-34 from D.V. Bangalore to E.E. Mandya intimating the acknowledgment for the above order.	
7.	317	Postal Insurance receipt for 458/10/- posted at Bangalore; signed by A1 on 5-5-34.	
8.	210	Postal Insurance acknowledgment receipt for the above. Signed by A1.	
	84	Foreign R.F. dated 30-4-34 for the despatch of 440 bags of cement from Shahad to Mandya in wagon No. 368 - 220 bags, and in wagon No. ~~XXX~~ 10500 - 220 bags. a) R. . Endorsed by in the writing of the Accountant on 5-5-34. (b) Covering letter containing with and Insured amount not forthcoming.	
	97	Cash Book maintained by the E.E. from 2-5-34 to 30-5-34. Entry on 5-5-34 for 458/10/-.	
11.	83	Receipt No. D. dated 5-5-34 granted by the E.E. for 458/10 above, to D.V. in the prescribed receipt Form.	
12.	(New)	Vehicle register maintained at Mandya Railway	

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C.C. No. 214/36-37.

List of documents to be exhibited in the case.

3-5-34 Indent No. 2006 dated 23/24-4-34.

12 (Contd)		Railway station.
13.	(New)	Loading and Unloading Tally Book of -do- of 3-5-34.
14.	241	Inward delivery book of Mandya Railway station, for 3-5-34. Signature of A1 for having taken delivery of 440 bags.
15.	299	Voucher for the payment of 2/8/- by A1 towards the unloading charges of 440 bags of cement at Mandya Railway station on 3-5-34.
16.	300	Voucher dated 10-5-34 for the payment of Rs 16/8/- by A1 being the cart hire on 440 bags coveyed from Mandya Railway station to storeson 3-5-34.
17.	51	Registered daily receipt of stock maintained in the division from 25-1-34 to end of Septr. Receipt of 440 bags on 3-5-34.
18.	57	Measurement Book No. 1866 page 25 for collection for receipt of 44[illegible] bags on 3-5-34. passed by Accountant, A.E.E. and E.E.
19.	264	Consignment note in the writing of A1 for booking 12[illegible] bags of cement from Mandya to Seringapatam on 3-5-34 to 'Self'.
20.	265	Risk note for the above. Note :- Witnesses attested by
21.	4	R.R. dated 3-5-34 for the despatch of 12[illegible] bags above to S. Patam in waggon No. 368 i.e. in the same waggon.
22.	(New)	Vehicle register of S. Patam Railway station for 3-5-34.
23.	(New)	Loading and Unloading Tally book -do- -do-.
24.	(New)	Inward delivery book of S. Patam Railway station, signature of Narayan Rao for M.C.L. Pathy.
25.	2	Day Book account of M.C.L. Pathy; entry on 10-5-34 shows the purchase of 120 bags from A1 @ 59/-. Note :- S.P.C. rate at Mandya for one waggon or 400 bags and above, @ ~~22/-~~ 66/4/- per Ton ; less than a waggon load @ 73/-.
26.	5	Ledger account of M.C.L. Pathy: running account on page 141.
27.	(New)	Letter dated 5-5-34 from Indore Bank to E.E. Mandya enclosing a bill of B.V.P. for 1457/8/- on 44[illegible] bags. Initialled by Accountant and E
28.	85	Bill dated 3-5-34 for 1457/8/- above; passed as above.

(Contd

C.C No. 214/36-37.

List of documents to be exhibited in the case.

)-5-34 Indent No. 2076 dated 23/24-4-34.

29.	61	Bill received register maintained in L.C's Office; entry P.C. No. 3159 dated 25-5-34.
30.	(New)	P.C. serial 163(a) Certificate attached with the bill sent to Comptroller for payment. (Like Ex No. 134). (Old Form).
31.	D. 63.	Form 63 Pl. New Form or revised Form of certificate -do- -do
32.	(New)	Stock account current for May 1934 showing the quantity and cost of 440 bags appeared in accounts
33.	283 of Cost. S.C.	T/T Form register showing monthly transactions of stock accounts and balances numerically

IN THE COURT OF THE SPECIAL IST CLASS MAGISTRATE,

Mysore. 219

C. C. No.215/36-37

ist of documents to be exhibited in the case.

16-6-34. Indent No. 2422 dated 25/26-5-34.
224 Bags

Sl. No.	No. of the Ext. in the C.F.C.No. Mandya.	Particulars of the ext.	Remarks.
1.	~~XXXX~~	~~Xxxkxxx

C.C. No. 215/36-37.

List of documents to be exhibited in the case.

11.	211	Postal Insurance acknowledgment receipt for 481/6/- addressed to E.E. Mandya signed by A1 on 6-6-34.
12.	83	Registered Insured letter dated 5-6-34 with 481/6/- received on 6-6-34 from B.V.C. Initialled by Accountant and E.E.
13.	323	Postal Insurance receipt No. 545 dated 12-6-34 for 481/6/- to the Executive Engineer, Mandya ; signed by A1.
14.	212	Postal Insurance acknowlegment receipt dated 12-6-34 for 481/6/- : signed by A1.
15.	93	Registered Insured letter dated 11-6-34 of from B.V.C. & Co., to E.E. Mandya along with E.R. dated 8.6.34 and 481/6/-.; Opened by Mr. A. Subba Rao as Accountant
16.	97	Cash Book of the E.E's Office, Mandya credit entries on 6-6-34 481/6/- and 12-6-34 for 481/6/-.
17.	107	Postal receipt No. 172 (posted at Bangalore on 3 -7-34)
18.	326	Postal receipt Insured amount for 1377/11/- received at Mandya on 31-7-34; signed by A1.
19.	108	Postal acknowledgment for the Insured amount -do- on 31-7-34.
20	90	Receipt No. 12 dated 6-6-34 for 481/6/- granted by E.E. To B.V.C. & Co., towards the Insured amount sent.
21.	94.	Receipt No. 17 dated 12-6-34 for similar amount -do- -do-
22.	95.	R.R.Dated 8-6-34 for the despatch of 460 bags of cement from Chabad to B.V. .& Co., and to E.E. Mandya in waggon No. 10619 - 230 bags and 10117 - 230 bags Endorsement by A. Subba Ra
23.	(New)	Vehicle register of Mandya Railway station for 16-6-34.
24.	(New)	Loading and Unloading Tally Book -do-
25.	241	Inwards Goods delivery book of Mandya Rv. station; signature of A1 for having taken delivery of the consignment of 460 bags on 16-6-34.
26.	303	Voucher dated 20-6-34 for the payment of 27/- by A1 being the unloading charges on 460 bags at Mandya Rv. station on 16-6-34.
27.	304	Voucher dated 20-6-34 for the payment of 17/4/- being the carting charges from Mandya

Cont'd.

C. C. No. 215/36-37

List of documents to be exhibitedin the case.

27 (Contd)		Mandya Fy. station to the divisional stores on 12-6-34. Paid by A1. Audited and passed.
28.	51	Register of daily receipt of stock in the divisional storesfrom 25-1-34 to Septr. 34. (a) Entry of 460 bags receipted on 16-6-34 checked by B.G.F., M.S., and initialled by A
29.	57	Measurement book No. 1806 for collection of stores ; page 27; recorded receipt of 460 bags on 16-6-34 ; initialled by A1 on 2[illegible]-6-34.
3	347	Consignment note for booking 224 bags of cement from Mandya to Mysore by A1 to 'Self' ~~x##&~~ on 16-6-34 in the writing of A1.
31.	348	Risk note for -do- -do- Witnessed attestedby
32.	6	R.R. dated 16-6-34 for the despatch of 224 bags from Mandya to Mysore by A1 to 'Self' in waggon No. 10117 i.e. in the same waggon. Signed by Padmaraiiah on 18-6-34.
33.	291	Delivery Book No. 25 of Mysore Railway Station from 17-6-34 to [illegible]-7-34. Signed and delivery taken by -do- .
34.	(New)	Vehicle register ofMysore Railway station for 16-6-34 and Loading and Unloading Tally Book for -do-,
35.	2(d)	Day Book maintained in M.C.L. Pathy's shop; entry on 19-6-34 showing the purchase of 224 bags @ 50/- from A1.
36.	234 of Asst. S.C.	Postal receipt dated 19-6-34 from Mysore Bank, Bangalore, for a registered letter to E.E. Mandya.
37.	324 ~~287~~	Postal receipt No. 287 received from the Bank of Mysore, Bangalore, received on 19-6-34.
38.	325	Postal registered receipt from -do- -do- received on 18-6-34.
39.	D.45.	Registered letter dated 11-6-34 from the Mysore Bank Bangalore, to E.E. Mandya encl sing a Bill in duplicate for 1523/12/- on 460 bags; initialled by A.S. and E.E.
40.	06	Bill dated 11-6-34 for R. 1523/12/- as above; passed by A.S. and B.C.E. and E.E.
41.	61	Bill receipt register maintained the division office; entry B.R. No. 3457 dated 16-6-34.
42	(New)	P.W. Sl. No. 163 (a) Certificate attached with the Bill sent to Comptroller as per Ex. P. 134 and 135 for payment.
43.	D. 63.	Form 53 Fl. revised Form to be attached with the Bill as above.

(Contd).

C.C. No. 215/[illegible]-37.

List of documents to be exhibited in the case.

44.	(New) (Ex. In Addl Ct.)	Comptroller's requisition book; entry of bill dated 11-6-34 for R 1523/12/- forwarded for arranging payment.
45	286 of Asst. S.C.	Stock account for June 34 showing the receipt of 460 bags with value taken into accounts submitted to comptroller. Note :- Vide item 8,9,10 in this showg entry of 820 bags were also carted to stores on 27-6-34 along with 920 bags .
46.	283 of -do-	'A' Form register showing monthly transaction of numerical account of stock in the Division and also the balance.
47.	311	Certified extract for the payments realised in the Mysore Bank towards the bills of P.V.K. & Co.,. Payment of R 1523/12/-, on 28-6-34.

IN THE COURT OF THE SPECIAL IST CLASS MAGISTRATE

C. C. No. 211/36-37.

List of exhibits to be filed in the case.

Removal of cement bags from the Divisional Stores, Mandya and conveyed by carts and delivered to M.C.L. Pathy's shop at Sore.

1. 2(e) On 11-7-34, 120 bags in four carts; R. 354/-.

2(f) On 3-8-34, 81 bags in three carts; 216/-.

2(g) On 15-8-34, 80 bags in three carts; 216/-.

Note :- Regarding the balances available and issues on these days ; Exhibits 274(of Asst. S.C.) (52 of S.T.C.M.Mandya) and statement of daily balances(Ex. No. 70 of Addl. S.C.) will have to be filed and deposed by the Accountant and S.C.T.

6462 231

WP 0186—GPB—60,000—26-9-36

224

From 193 Law 205-34

The Public Prosecutor

Mysore Division,

Mysore.

To

The General Secretary to the Government of H. .the Maharaja of Mysore,

BANGALORE.

Dated 14th May 1937.

Despatched

Received

General No.

No. 1375

Enclosure No.

DEWAN'S OFFICE
18 MAY 37
No. 5127

GENERAL SECTION
15 MAY 1937

OFFICE OF THE FIRST MEMBER
15 MAY 1937
No. 1478

C.C.No.212 of 1936-37
(Govt. Vs.K.Krishna Rao)
on the file of the Special First Class Magistrate, Mysore.

Sir,

I have the honour to state that the judgment was delivered to-day in the marginally noted cement defalcation case sentencing the accused K.Krishna Rao to Rigorous Imprisonment for two years on each of the three counts of misappropri-

-ation

Submitted for perusal
15/5/37
BKR
15/5

Pl see
16/5

Mg
18-5-37

Sec A
20-5-37

Pl see
BKR
20/5

misappropriation under Sec.409 I.P.C. to run concu ntl.

Copy of judgment will be submitted after it is received

I have the honour to be
Sir,
Your most obedient servan

Public Prosecutor.

103/837

WD 0240—GPB—25,000—1-10-36

193 Law 205-34-13

From

The Public Prosecutor
Mysore Division
Mysore

To

The Secretary to the Govt of H.H. the Maharaja of Mysore Law Section Bangalore

Dated 4.7.37

Despatched 4.7.37

Received

General No. 11

No.

Enclosure No.

GENERAL SECRETARY.
6 JULY 1937

C.C. No. 211-214/45/36-37
(Govt. vs R. Krishnadas)
On the file of the Special First Class Magistrate Mysore.

Sir,

I have the honour to submit herewith copy of judgment passed in the Cement defarcation case of Mandya Division in the case noted in the margin. Accused R. Krishnadas has been convicted and sentenced to suffer two years R.I. on each of the three counts, the sentences to run concurrently.

On Page 5 of the judgment the learned Magistrate has thrown a suggestion that the question of the criminal liability of M.C.L. Pathy PW 21 appears to require investigation. A similar suggestion has been made in the judgment given by the same Magistrate in C.C. No. 12/36-37 wherein the chief accused

being separately addressed to initiate such further actions as he deems proper to proceed against Mr E/K. D. Bhamaich and Mr M. C. L. Pathy with a view to ascertain their guilt or innocence in burglari

In the court of the special I class Magistrate, Mysore. 228

Dated this 30th day of June 1937.

Present: K.P. Ramanathaiya, Esq.. M.A..

Special I class Magistrate, Mysore.

Criminal Case No. 211 of 36-37.

Complainant:- Government of Mysore.

-Versus-

Accused:- R. Krishna Rao.

Judgment.

1. The present case is one of a series of cases launched by the Police Officer of Mandya Taluk against the accused. It is und Section 409 I.P.C, and comprises three items of misappropriation committed by the accused. All the three items fall within a period of 12 months and fulfil the conditions laid down in Section 234 (i) of the Criminal Proceedure Code. These three items originally formed the subject matter of three cases, viz., of C.C.~~22~~ 211, C.C.214 and C.C.215. In accordance with the opinion of the Public Prosecutor (vide order sheed dated 5-5-37) these three items were clubbed together and tried. The trial started on 1-6-37 and terminated on 23-6-37. Altogether 24 witnesses were examined for the prosecution

2. The above mentioned three items of defalcation are disengaged from the mass of defalcations stated to have been committed by the accused in the years 1932-33 and 1933 and 34 as the Store Keeper of the P.W.D. Stores of the Irwin Canal Division, Mandya. The defalcations are seen to have occurred during the period of office of two Executive Engineers, Messrs N.Subba Rao (P.W17) and C.T.Narasimha Iyengar (P.W3). The items now in question are all stated to have occurred between the months of April and June of 1934 (both the months inclusive). They touch the final months of Mr.N.Subba Rao's period of office and extend over the opening months of Mr.C.T.Narasimha Iyengar's period of office.

3. Mr.C.T.Narasimha Iyengar (P.W3) is seen to have inspected the Division Stores on 3-9-34 for the half year ending June 1934, and on taking stock of the standing cement bags, to have found 793 bags in the stores, vide Exhibit P37(a). He again counted the balance in the stores on 22-9-34. He then discovered only 398 bags

398 bags of cement. On verifying the issues during the interval he found that only 175 bags had been issued. The balance thus showed a deficit of 220 bags of cement. His suspicions having been aroused, he took charge of the stores and sealed it. He then had the 'A' Form Register posted. When it was completed the next day he discovered a total deficit of 1335 bags of cement in the Stores. He sent a complaint to the Police Inspector of Mandya on 23-9-34, who registered a case under the I.P.C, against the accused, and arrested him.

4. The Investigating Officer, The Police Inspector Mr. H.M.Nurulla, investigated the case, and in the course of the investigation seized certain monies outstanding in the account books of the merchants that were purchasing cement from the accused, seized the relevant account books, completed the investigation, and laid the charge-sheets on 23-10-34 and 10-1-35 respectively. The Assistant Comptroller after arranging a special audit, arrived at the figure of 1337 as the number of cement bags that should have been missing on 22-9-34.

5. Five of the cases launched against the accused were transferred to this Court under Section 518 Cr.P.C. by the District Magistrate in his order No.N.Dis.G1-745/36-37 dated 9-12-36. One of these cases was disposed of; another was withdrawn; and the remaining three form the subject matter of the present case.

1st item 140 bags date 9-4-34

The first of three items of misappropriation stated to have been committed by the accused relates to 140 bags of cement out of a consignment of 440 bags received at Mandya on 8-4-34, and taken delivery of by the accused on 9-4-34. An indent for 1 wagon of cement went out from the Executive Engineer to the firm of Messrs B.V.Narayana Swamy & Co.. of Bangalore under Ex.P60 dated 2-3-34. A reminder was issued under Ex.P61 for the same. In response to this indent a consignment of 440 bags of cement were despatched by the firm under Railway Receipt, Ex.P18. This Railway Receipt was presented by the accused at the Railway Station on 9-4-34 and the goods were taken delivery of by him vide Exhibits P2(b), P3(b) and P74(a).

On the same day the accused consigned 140 bags out of the 440 bags by means of Railway Receipt marked Ex.P10 to Mysore to 'self' in one of the two wagons in which the 440 bags arrived at Mandya (wagon No.8947). This consignment of 140 bags to Mysore by the accused is borne out by Exhibits P75(a), P51, and P52, which are respectively, the entry in the Loading Tally Book, the Forwarding Note and the Risk Note, of the Railway Station at Mandya. These are testified to by P.W24, the then Station Master at Mandya. Thes P.W2 testifies to the arrival of the 140 bags at Mysore booked to 'self' by the accused and taken delivery of by one Narayana Swamy (P.W9) for one Mr.M.C.L.Pathy of Dodpet, Mysore. This is proved by Ex.P13(a). Exhibit P10 is the R.R. P16 is the Delivery Note taken by him from the station to Mr. M.C.L.Pathy. P16 (a) is his note to Mr.M.C.L.Pathy to pay the cart hire. He states that he handed the 140 bags of cement to Mr.M.C.L.Pathy. Exhibits P51 and P52 are filled in and signed by the accused. The Firm collected moneys from the Executive Engineer through the Bank of Mysore for the value of the cement supplied by them, as borne out by the evidence of P.Ws 15 and 16.

The second item of misappropriation stated to have be committed by the accused relates to 120 bags of cement out of a consignment of 440 bags received at the Mandya Railway Stati on 8-5-34, and landed and taken delivery of by the accused on 9-5-34. It arrived under Railway Receipt marked Ex.P24. The Railway Receipt was presented by the accused on 9-5-34 at the station and the 440 bags were taken delivery of by him. Ex.P2(c) is his signature acknowledging the delivery. Ex.P4(b) is the entry in the unloading Tally Book. The wagons in which the bags arrived bore the numbers of 368 and 10500 vide Ex.P3(c).

On the same day the accused sent 120 bags out of the 440 bags to Seringapatam under Railway Receipt marked Ex.P9 and booked to 'self'. The 120 bags went in one of the above mentioned wagons (No.368). Ex.P75(b) is the corresponding entry in the Loading Tally Book. P55 and 56 are the Risk and consigning notes filled in and signed by the accused.

P.W24 testifies to the above facts. P.W20, the Relievin Station Master of Seringapatam speaks to the corresponding

corresponding entries in exhibits P70 and P72(a), the Goods Delivery Book and the Vehicle Register of the Seringapatam Station.

One D.Naravana Rao (P.W19) of Mysore took delivery of the 120 bags at Seringapatam vide exhibit P70(a). P57 is the R.R. signed on the reverse by the accused and consigned to self. The receipt of these 120 bags are entered in the account books of Mr.M.C.L.Pathy of Mysore (P.W19 was working with M.C.L.Pathy at the time). Page 41 of Ex.P71 is the Ledger account of the accused with Mr.M.C.L.Pathy. P71(a) is the corresponding entry relative to the 120 bags.

The facts recited in the above paragraph are corroborated by the testimony of P.W21 Mr.M.C.L.Pathy himself. He acknowledges the transactions in cement that the accused had with him and speaks to the receipt of the 120 bags vide exhibit P71(a). The Ledger Account is headed "ಮಂಡ್ಯ ಜಲ್ಲಿಯವ ಮಾಲಿಕ ವಿಶೇಷ ಸೂಪರಿಂಟೆಂಡೆಂಟ್" Cement was purchased by him from the accused at this period of time at the rate of Rs.59/- per ton. His selling price on 14-5 was Rs.64/- per ton vide exhibit P69(d).

The third item of defalcation stated to have been committed by the accused relates to 224 bags of cement out of a consignment of 460 bags ~~xx~~ received for the P.W&D.Divisional Stores at Mandya. 460 bags of cement arrived at Mandya under Railway Receipt, Exhibit P1, to the address of the Executive Engineer, Irwin Canal Division. The Railway Receipt was endorsed in favour of the Store Keeper (accused) vide Exhibit P1(b). The ~~accused~~ presented the Railway Receipt on 16-6-34 vide Ex.P1(c) and obtained delivery. Ex.P2(a) is the corresponding entry in the Goods Delivery Book. Exhibit P2(a)(1) is the signature of the accused. Exhibits ~~P4(a)~~ P4(a) and (b) are the corresponding ~~entries~~ entries in the Vehicle Register and showing the arrival of the 460 bags in wagons number 10619 and 1011

and Rick notes in which the accused has signed his name with designation. They are Exhibits p 6(a) and P7(a). Ex.p8(a) is the corresponding Entry in the Loading Tally Book. The 224 bags went to Mysore in wagon No. 10117. The accused has signed on the back of the Railway Receipt (p5).

These 224 bags were delivered to one A.S. Padma Rajiah (pw8) at Mysore, vide P.11(a). Ex.p14 is the gate-pass issued to pw8 for the removal of the 224 bags. These bags were also received by pw8 for Mr. M.C.L. Pathy.

The above facts are borne out by the respective pws.

Certain extraneous evidence, not properly relevant to the case, is let in through pws. 10 & 11, which is probably calculated to stress the defalcating habit of the accused. It reveals another mode of action of the accused in dealing with the cement of the stores, by making a direct conveyance of cement bags from the Stores by cart by night. This however does not appear strictly to relate to the matter in hand. Some evidence relating to another 59 bags is also brought in in the course of the evidence regarding the 2nd item - probably because it was partly inseparable from the 2nd item. This part of the evidence is also excluded from consideration in connection with the case.

In the above three instances it is seen that the accused was in commercial relationship with one Mr. M.C. Pathy, (pw21) a merchant in Dodpet, Mysore. This witness, while acknowledging the transactions with the accused with reference to his Account Books, affects ignorance as regards the nature of the transaction He affects to make out that he took the accused for a commission-Agent from Mandya and does not appear to have looked closely into his credentials. His landing of the goods at Seringapatam and carting them thence to Mysore throws a serious doubt on the bonafides of the witness and it appears to be straining credenc to believe that he was ignorant of the clandestine character of the transactions. This aspect of the matter appears to require investigation.

In his statement the accused has made grave allegations against the Accountant of the Executive Engineer's office, one Mr. Singra Iyengar (pw6), and against Mr. N. Subba Rao, Executive

Engineer (pw17), insinuating that he committed the Breaches of Trust with respect to the cement bags inorder to provide for the construction of houses by the above named officers. He has much as states that he acquiesced in the appropriation of part of the cement for the house-building purposes of the said officers. These allegations are not borne out by any testimony. The accused states that he was receiving slips of paper asking him to send cement bags from the Accountant. But he was not able to produc any of these alleged slips. In the absence of any evidence in the matter there appears to be no call for commenting on the allegations. The accused adds further that he sold part of the cement and purchased certain other House-building materials for the above officers. This amounts to a ~~special~~ species of indirect admission by the accused generally with reference to th defalcations. But his [illegible] contractors used to leave part of the goods at the Stores for being leisurely conveyed for the house-building purposes is not substantia

but were being again consigned by the Store-keeper - without the authority of the Executive Engineer. It might have been possible to see through the exceedingly thin veneer. The action of the Station Master may perhaps be capable of being technically justified; but it does not appear to be as clear that it could be morally defensible.

The Postal Clerk again (P.W14) used to hand insured articles to the accused without the proper letter of authority. The trust inspired by the accused appears to have been infectious.

In conclusion I find the accused guilty of three distinct offences, each under Section 409 of the I.P.C. I convict him under Section 258 (2) of the Criminal Procedure Code and sentence him to two years of rigorous imprisonment on each of the three counts, the sentences to run concurrently.

The investigation of the Police Inspector, Mr.H.M. Nurulla, deserves to be mentioned. His seizure of the moneys from the persons with whom the accused had been carrying on transactions, and his seizure of their account books were prompt and have rendered the elucidation of the cases easy.

Pronounced in Open Court,

Sd/- K.P. Ramanathaiya,

Special First Class Magistrate,

Mysore. Dated 30th June 1937.

235

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

Dated, Bangalore, 16.7.37

From

The *General Secretary to the Government of His Highness the Maharaja of Mysore.*

To

The Public Prosecutor,
Mysore Division,
M y s o r e .

Sir,

Re- cases arising out of cement defalcation in Mandya.

Now that the C.C. Nos. 211, 212, 214 and 215 are disposed off, I am directed to invite reference to your letter No. 975 dated the 2nd February 1937 and your D.O. 1102 dated the 25th February 1937 and to request you to intimate your opinion about the desirability or the necessity of proceeding with C.C. No. 213/36-37 (the case against the Accountant and the Typist).

I have the honor to be,

S i r ,

Your most obedient servant,

for General Secretary to Government.

Appendix F G—1]

SUBJECT .....

.....

.....

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the 193

Date of issue 16.7.37

Signed by Mr. BKR.

Kindly treat the C.C. Nos 211, 212, 214 and 215 are disposed of, I am directed to invite your attention to your letter No. 975 dated 22.2.37 and your D.O. No. 1102 dated 25.2.37 and to request you to intimate your opinion about the desirability of the necessity of proceeding with C.C. 213/36-37. Clear the case and bring to account of the typist.

List of enclosures.....

Copied by .....

Examined by.....

Section Law

File No. 205-34

Serial No.

No. P239

To

The P.P., Mysore

Re: Cases arising out of Cement defalcation in Mandya.

Sir,

With reference to your letter No. 11, dated 4-7-37 forwarding a copy of judgment passed in C.C. Nos 211, 214 & 215 of 36-37 on the file of the Spl. I Class Magt., Mysore (Court of R. Krishna Rao), I am directed to request you to intimate your opinion about the desireability or necessity of proceeding with C.C 213/36-37 on in view of the fact that from the cases disposed of it has been possibl

237

to fix the liability of the
Receiver of Cement bags belonging
to Govt.

I have etc.

[illegible]

for Govt. Secy.

350 P 837
238

Tel. Address:
"POLICE"
PHONE No. 298.

POLICE DEPARTMENT.

OFFICE OF THE
INSPECTOR-GENERAL OF POLICE IN MYSORE.

When replying please quote
No. C.2-275/34-35

Dated Bangalore, 14TH JULY *193*7.

FROM

F. A. HAMILTON, ESQ., C.I.E.,
Inspector-General of Police in Mysore,
Bangalore.

To

B. T. KESAVAIENGAR, Esq., B.A.,
Chief Secretary to the Government of
His Highness the Maharaja of Mysore,
BANGALORE.

CHIEF SECRETARY
15 JUL 193
GOVT. OF MYSORE

SIR,

In continuation of my letter No.C.2-275/34-35 dated the 16th March 1936, in regard to Mandya Cement Defalcation case, I have the honour to state that it is reported by the District Superintendent of Police, French Rocks, that the Special I Class Magistrate, Mysore, delivered judgment in Crime Nos. 211, 212, 214, 215/36-37 on his file convicting the accused R. Krishna Rao under Section 409 I.P.C. and sentencing him to two years R.I. under each count, the sentences to run concurrently. It is ascertained that the District Superintendent of Police, Mysore District, has taken action to register cases against three of the receivers residing at Mysore.

I have the honour to be,
Sir,
Your most obedient servant,

INSPECTOR GENERAL OF POLICE.

From

The Public Prosecutor
Mysore Division,
Mysore.

To: The General Secretary to the
Government of H.H. The Maha
of Mysore, Bangal

Dated 15.7.1937

Despatched

Received

General No.

GENERAL SECRETARY.
17 JULY 1937

BKR
17.7.37

Sir,

With reference to your letter No.
P.239 Dated the instant
Calling for the report on the
desirability or necessity of Procede
with C.C. No. 213 of 36-37 (Governm
Vs R. Krishna Rao and two others)
on the file of the Special First Cla
Magistrate, Mysore, I have the hon
to state that under the orders of
the District Magistrate Communica
in his letter No. G1-902 of 36-
Dated 30.4.1937 The said Perce
was withdrawn on or about 5.5.
and the accused were ~~acquitted~~
discharged

The original order received fro
the District Magistrate is submi
herewith for the information

I have the honour to be
Sir
Your most obedient Servant

R. Pearce Edgcumbe

Public Prosecutor,

No. G.-902/36-7

OFFICE OF THE DEPUTY COMMISSIONER,
and District Magistrate,
MYSORE DISTRICT.

Dated, Mysore, the 30th April 1937

--MEMO.--

Subject:-

French Rocks District Superintendent of Police's letter No. S.113/36-38 dated 13-4-1937 requesting the withdrawal of the case against T.N.Srinivasaiengar.

Public Prosecutor's letter No.1324 dated 22-4-37 furnishing his opinion in the matter.

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O R D E R.

In the circumstances reported by the District Superintendent of Police, French Rocks, and opined by the Public Prosecutor, Mysore, the case in C.C. No.213/36-37 -- (Government Vs. (1) T. Krishna Rao, (2) T. Srinivasaiengar, and (3) T.S. Krishnaswamy) on the file of the Special First Class Magistrate, Mysore, may be withdrawn. The District Superintendent of Police, French Rocks, is requested to take necessary action in the matter.

K. Sankaranarayana
for District Magistrate,
Mysore District.

Copy to:

1. The District Superintendent of Police, French Rocks.
2. Special First Class Magistrate, Mysore.
3. Public Prosecutor, Mysore Division.